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SETTLEMENT OF SAN LUIS REY RIVER WATER CLAIMS

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S. 1507

RELATING TO THE SETTLEMENT OF CERTAIN CLAIMS AND CONTROVERSIES INVOLVING THE WATERS OF THE SAN LUIS REY RIVER IN SAN DIEGO COUNTY, CALIFORNIA, AND TO OTHER MATTERS

MARCH 6, 1980

WASHINGTON, D.C.

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READEX FICHE

SETTLEMENT OF SAN LUIS REY RIVER WATER CLAIMS

THURSDAY, MARCH 6, 1980

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to call, at 10:27 a.m., in room 5110, Dirksen Senate Office Building, Hon. John Melcher (chairman) presiding.

Present: Senators Cohen and Melcher.

Staff present: Max Richtman, staff director, and Virginia Boylan, staff attorney.

Senator COHEN [acting chairman]. The meeting will come to order.

The select committee is meeting this morning to consider testimony on S. 1507, a bill to legislate a settlement of certain claims to the waters of the San Luis Rey River, San Diego County, Calif.

Five bands of Mission Indians have been involved in litigation with the United States, the Vista Irrigation District, and the Escondido Mutual Water Co. These suits involve old contracts that have had the effect of diverting waters from the river that are needed by the five tribes.

I want to make it clear at the outset that the committee is not wedded in any way to the provisions laid out in S. 1507 for settlement of this dispute. S. 1507 is merely a starting place from which the committee hopes to be of assistance in settling this dispute. The Congress is aware that the parties have been in continuous negotiation since S. 1507 was introduced last July, and is anxious to hear from all of those who are concerned about the status of the current negotiations and how this committee can be helpful in bringing about a settlement to avoid further litigation.

At this time I will introduce a copy of S. 1507 into the record.

[The bill follows. Testimony resumes on p. 15.]

II

96TH CONGRESS
1ST SESSION

S. 1507

Relating to the settlement of certain claims and controversies involving the waters of the San Luis Rey River in San Diego County, California, and to other matters.

IN THE SENATE OF THE UNITED STATES

JULY 13 (legislative day, JUNE 21), 1979

Mr. CRANSTON introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

Relating to the settlement of certain claims and controversies involving the waters of the San Luis Rey River in San Diego County, California, and to other matters.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Congress hereby declares that it is the policy of Congress to resolve, without further costly and lengthy litigation, the water rights claims of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians to the San Luis Rey River in San Diego County, California, provided reasonable settlement can be reached.

READEX FICHE

(b) The Congress hereby finds and declares that—

(1) when La Jolla, Rincon, San Pasqual, Pauma, Yuima, and Pala Indian Reservations were established, it was the obligation and intention of the United States to provide water for domestic and agricultural purposes, and such obligation remains unfulfilled;

(2) water must be provided to the La Jolla, Rincon, San Pasqual, Pauma, Yuima, and Pala Indian Reservations in order for the purposes for the establishment of those reservations to be fulfilled, for the Indians living on or near those reservations to be economically self-sustaining and for the standard of living from their own productive efforts to be raised to a level comparable to that enjoyed by non-Indians in neighboring communities;

(3) an important issue involved is the liability of the United States for allowing the waters of the San Luis Rey River to be diverted to the communities of Escondido and Vista, California;

(4) the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians, the United States (through the Interior and Justice Departments), the city of Escondido, the Escondido Mutual Water Company and the Vista Irrigation District have been engaged in extremely costly litigation for the past fifteen

years in the Federal courts, the Federal Energy Regulatory Commission, the Indian Claims Commission, and the Court of Claims with regard to the water rights controversy on the San Luis Rey River and, in the absence of a settlement, such litigation can be expected to continue for another ten years at a minimum;

(5) the forty-three thousand acres above Lake Henshaw owned by the Vista Irrigation District are presently undeveloped and it is in the public interest for them to be permanently devoted to open space, agricultural and recreational uses. These lands also possess unique historic and archeological value and are the aboriginal home of the Cupeno Indians from which they were involuntarily removed in 1903;

(6) a critical situation exists on the Indian reservations along the San Luis Rey River and in Escondido in that—

(A) economic development of the reservations is stifled, unemployment on the reservations is very high, and the Indians standard of living is much lower than their non-Indian neighbors;

(B) the Indian lands are largely barren while comparable lands off the reservation are intensely cultivated, primarily with citrus and avocado groves;

(C) Henshaw Dam located at the headwaters of the San Luis Rey River above the Indian reservations is not considered safe. The California Division of Safety of Dams has determined that Henshaw Dam is prone to failure in the event of seismic activity. The restrictions imposed by the Division of Safety of Dams on the storage that can be accumulated in Henshaw has resulted in the waste of large quantities of water to the ocean, amounting to a loss of approximately $2,000,000 in 1978 alone. In its present condition, Henshaw cannot provide needed flood protection for any of the lands located below the dam including the Pauma Valley, the city of Oceanside, and the La Jolla, Rincon, and Pala Indian Reservations.

(D) the protracted litigation has prevented the full integration of the city of Escondido's water system with the water distribution system of the Escondido Mutual Water Company; and

(E) the exportation of San Luis Rey River water out of the watershed to the communities of Escondido and Vista, California, has contributed and is contributing to the degradation of water quality in the Pauma and Pala ground water

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basins that underlie the Rincon, Yuima, Pauma, and Pala Indian Reservations;

(7) this Act is proposed to settle the San Luis Rey River water rights controversy in a manner that will enable the La Jolla, Rincon, San Pasqual, Yuima, Pauma, and Pala Indian Reservations to fulfill their principal purpose by becoming economically self-sustaining communities, will settle the existing litigation involving the waters of the San Luis Rey River in a manner that is fair, just, and reasonable, and will enhance the environment and outdoor recreational opportunities available to the public in northern San Diego County in the State of California; and

(8) it is the intention of this Act not to discriminate against any non-Indian landowners or other persons, but to fulfill the historic and legal obligation of the United States toward the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians in a fair, just, and reasonable way.

SEC. 2. (a) The Secretary of the Interior (hereafter referred to as the "Secretary") is authorized—

(1) to enter into a contract with the Escondido Mutual Water Company providing for the purchase by the United States of the facilities, lands, rights of way, and other interests in land licensed under project num-

bered 176 of the Federal Energy Regulatory Commission, except Lake Wohlford, Bear Valley Dam, and all facilities, lands, rights of way, and other interests in lands located below Bear Valley Dam, and for the acquisition of all of the rights of the Escondido Mutual Water Company to utilize and divert the ground or surface waters of the San Luis Rey River, including water stored in Lake Henshaw and water pumped from the ground water basin above Lake Henshaw provided that such contracts shall insure maintenance of Lake Wohlford for domestic and recreational purposes; and

(2) to enter into a contract with the Vista Irrigation District providing for the purchase by the United States of Henshaw Dam, Lake Henshaw, and all of the lands owned by the Vista Irrigation District above Lake Henshaw, and for all of the rights of the Vista Irrigation District to utilize, impound, or divert the ground or surface waters of the San Luis Rey River, including all riparian rights appurtenant to the lands owned by the Vista Irrigation District above Lake Henshaw.

(b) All of the facilities, lands, rights of way, interests in land, and water rights acquired pursuant to subsection (a) of this section, except the forty-three thousand acres of land

located above Lake Henshaw, shall be held by the United States in trust for the sole use and benefit of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians.

SEC. 3. The Secretary is further authorized—

(1) to enter into a contract with the city of Escondido transferring to that city title to the one hundred and eighty-one acres of Government land underlying or adjacent to Lake Wohlford that are included within the boundaries of project numbered 176 licensed by the Federal Energy Regulatory Commission for as long as those lands are devoted to recreational purposes;

(2) to enter into a contract with an entity established by the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians providing for the operation, control, care, and maintenance of the facilities and other interests acquired pursuant to section 2(a) of this Act.

SEC. 4. In consultation and cooperation with the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians, the Secretary is directed—

(1) to adopt plans for the construction of irrigation systems for the La Jolla, Rincon, San Pasqual, Pauma, Yuima, and Pala Indian Reservations to en-

compass all of the practically irrigable acreage within those reservations;

(2) to construct such irrigation systems in reasonable increments over a period not to exceed five years;

(3) to devise and adopt an operating plan for the impoundment, release, diversion, and utilization of the waters and ground waters of the San Luis Rey River. In connection with such operating plan, the Secretary is authorized to enter into or to approve contracts for the sale and delivery of the waters of the San Luis Rey River in excess of the needs and requirements of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians with the Escondido Mutual Water Company, the Vista Irrigation District, the city of Escondido, and any other entities who may wish to purchase San Luis Rey River water: *Provided*, That such water shall be sold at a price comparable to that charged by the San Diego County Water Authority, and that the proceeds from the sale of such water shall be used (A) for the operation and maintenance of the facilities acquired pursuant to section 2(a) of this Act, except for the lands above Lake Henshaw; and (B) for the construction of the irrigation systems on the La Jolla, Rincon, San Pasqual, Pauma, Yuima, and Pala

Indian Reservations and the development of the irrigable acreage on said reservations;

(4) to adopt as soon as practicable, in consultation with the California Division of Safety of Dams, plans for the rehabilitation of Henshaw Dam designed to make that structure safe in the event of seismic activity, for the improvement of the wells and other water gathering facilities from the ground water basin above Henshaw Dam in order to maximize the safe yield of that ground water basin and enhance the flood control capacity of the rehabilitated Henshaw Dam; and

(5) to undertake the construction required to implement the plans adopted pursuant to paragraph (4) of this subsection.

SEC. 5. The Attorney General of the United States is authorized and directed to enter into and approve settlements for all of the damage claims presented in the case of Baron Long and others against the United States, docket numbered 80–A now pending in the United States Court of Claims. Upon the payment of the sums required by such settlements, the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians, and the United States on their behalf, shall agree to waive any and all claims for damages and all claims for annual charges against the Escondido Mutual Water Company, the city of Escondido and the Vista Irriga-

tion District arising from the impoundment and diversion of the waters of the San Luis Rey River and the use of Indian lands for that purpose. Upon the payment of such sums and the execution of the contracts pursuant to sections 2(a)(1) and 2(a)(2) of this Act, the parties shall agree to the dismissal of the cases of Rincon Band of Mission Indians and others against Escondido Mutual Water Company, and others, civil numbered 69–217–S, Rincon Band of Mission Indians and others against Vista Irrigation District, civil numbered 72–276–S, and United States against Escondido Mutual Water Company, and others, civil numbered 72–271–S, all in the United States District Court for the Southern District of California.

SEC. 6. The Secretary is authorized to enter into contracts with the Metropolitan Water District of Southern California, the San Diego County Water Authority, or any member agencies of the Metropolitan Water District of Southern California or San Diego County Water Authority providing for the delivery of such district water to the La Jolla, Rincon, San Pasqual, Pauma, Yuima, or Pala Indian Reservations, and for the sale or exchange of San Luis Rey River waters for Colorado River and northern California waters imported into San Diego County by such district and authority. Such contracts shall be subject to the approval of the affected band. The Secretary is authorized to construct

whatever facilities may be necessary to deliver imported Colorado River or northern California water, or both, to the reservations pursuant to paragraph (2) of subsection (a) of section 4 of this Act.

SEC. 7. (a) Within ninety days of the date of the enactment of this Act, the Secretary shall appoint a five-member Commission which shall undertake all necessary studies and investigations and, within two years of the date of enactment of this Act, submit to the Secretary recommendations for a comprehensive plan for the management and utilization of Lake Henshaw and the forty-three thousand acres of land above Lake Henshaw purchased from the Vista Irrigation District for the purposes of open space, watershed, agriculture, recreation, and tourism. The members of such Commission shall include one person recommended by the Governor of the State of California, one person recommended by the board of supervisors of San Diego County and one person recommended by the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians and two persons selected by the Secretary. Within six months after the submission of such recommendations, the Secretary shall adopt a comprehensive plan for the utilization and management of Lake Henshaw and the forty-three thousand acres of land above Lake Henshaw for the above specified purposes and shall submit such plan to the Congress. The Secretary shall begin

implementation of that plan six months after its submission to the Congress.

(b) Until the adoption and implementation of the plan for the management and utilization of Lake Henshaw and the forty-three thousand acres of land above Lake Henshaw as provided in subsection (a) of this section, the Secretary shall administer those lands so as to preserve existing conditions to the maximum extent possible. The Secretary may enter into an agreement with the United States Forest Service providing for the temporary administration of the lands above Lake Henshaw, exclusive of appurtenant water rights, as part of the Cleveland National Forest.

(c) No uses shall be made of the lands above Lake Henshaw that will substantially impair the quality or quantity of water available for use on the La Jolla, Rincon, San Pasqual, Pauma, Yuima, or Pala Indian Reservations unless the approval of the affected band is first obtained. For purposes of this subsection, water uses amounting to less than five hundred acre-feet annually that have a de minimus effect on downstream water quality shall not be considered to substantially impair the quality or quantity of such water.

(d) If the comprehensive plan adopted pursuant to subsection (a) of this section includes the use of land for agriculture, recreation, tourism, or other commercial ventures, the Secretary shall give preference to the greatest extent feasible

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to the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians, to their members, and to entities owned or controlled by the bands or their members, in leasing or conveying lands for such purposes.

SEC. 8. This Act is intended to provide a full and complete resolution of all issues in the project numbered 176 proceeding that have been brought before the Federal Energy Regulatory Commission. This Act shall serve as the legislation contemplated by sections 7(c), 14(a), and 14(b) of the Federal Power Act (16 U.S.C. 800(c), 807(a), and 807(b)). Upon execution of the agreements required by section 5 of this Act, the Federal Energy Regulatory Commission shall dismiss all project numbered 176 proceedings including dockets numbered E-7562 and E-7655 and project numbered 559.

SEC. 9. Notwithstanding any other provision of this Act, no authorization to make payments under this Act, or to enter into contracts, shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

SEC. 10. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Senator COHEN. Our first witness was to be a gentleman who has apparently suffered a medical emergency and instead we will have Senator Cranston, who will be here in just a moment. I would indicate that I apologize to those of you who are in the room today. Senator Melcher is currently tied up in another committee and hopes to be here momentarily and has asked me to begin these proceedings in his absence. So, as soon as Senator Cranston arrives, which will be momentarily, we can begin. I appreciate your waiting for at least a half an hour.

Senator Cranston, we welcome your appearance before the committee and look forward to hearing your testimony in this matter.

STATEMENT OF HON. ALAN CRANSTON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator CRANSTON. I appreciate very much this opportunity to testify and I appreciate your presence making it possible. Thank you very much.

This hearing is on S. 1507 to settle certain water rights claims on the San Luis Rey River in California and I am glad to have this opportunity to speak on it.

Appearing after me this morning will be representatives of the Vista Irrigation District of Vista, Calif., and five bands of Indians; Rincon, La Jolla, San Pasqual, Pauma, and Pala Mission Indian bands. These parties have San Luis Rey River water rights in dispute and have agreed to settle these disputes through legislation.

At the time S. 1507 was introduced last July, two other parties in the disputes, the city of Escondido, Calif., and the Escondido Mutual Water Co. also supported the legislation. Just this week I received word directly from the city and Escondido Mutual that Escandido no longer supports the legislation and will not testify at this hearing. A negotiated and legislative settlement is still in the long-term best interests of Escondido, and I am hopeful that the city and water company will reconsider their decision.

Senator COHEN. Senator Cranston, could I just interrupt for a second and ask if you have any personal understanding as to why the change of heart or mind?

Senator CRANSTON. I do not. They just haven't come to an agreement yet on the amount of the settlement that is appropriate. I think we should proceed, however, to work out a solution in this way.

I anticipate that other witnesses this morning will go into some detail about the background of these disputes, so rather than repeating them, I would like to submit a summary of the situation for the record.

It is my understanding that this administration wants to resolve longstanding disputes over water rights through negotiation and legislation whenever possible rather than through protracted litigation. That is the purpose of S. 1507.

This bill would settle all the water rights disputes and outstanding legal issues. As originally introduced, it was estimated that the legislation would cost the Federal Government $118 million, a price tag which I indicated at the time was unrealistic, especially considering the need to control inflation and trim the Federal budget.

Since July 1979, the parties have negotiated with the Departments

of Interior and Justice to revise S. 1507 so that it would continue to meet the reasonable needs of all parties, but at a more modest cost.

I am gratified that the cost of the proposed revised legislative settlement, which I have outlined in my full prepared statement, is considerably less—at the most $50 million. Given the important question of the liability of the Federal Government for allowing the waters of the San Luis Rey River to be diverted, payments probably will be made by the Federal Government in any case.

I want to emphasize that there is tremendous public interest in settling these San Luis Rey River water rights disputes through legislation. As long as the litigation is unresolved, there is question about whether Henshaw Dam can be repaired. Currently there is the inability of storing more than 10,000 acre-feet of water behind Henshaw Dam and a need to provide flood control to the people living along the San Luis Rey River. This has been particularly evidenced with the recent torrential rains in southern California and the spilling of $5 million worth of water from Henshaw Dam. There is public interest in permitting the economic development of the Indians' lands to proceed on a stable basis.

Thus, I hope that the committee will look favorably on the legislation with the amendments suggested in my testimony providing the parameters of a negotiated settlement.

I have a longer statement that I will submit for the record. I thank you very much.

Senator COHEN. Without objection, so ordered. We thank you for your testimony, Senator Cranston.

Senator CRANSTON. Thank you very, very much.

[The prepared statement follows:]

PREPARED STATEMENT OF ALAN CRANSTON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Mr. Chairman, I very much appreciate your holding this hearing this morning on S. 1507, to settle certain water rights claims on the San Luis Rey River in California, and providing me the opportunity to testify on this important legislation.

Appearing after me this morning will be representatives of the Vista Irrigation District of Vista, California, and five bands of Indians—Rincon, La Jolla, San Pasqual, Pauma, and Pala Mission Indian Bands. These parties have San Luis Rey River water rights in dispute and have agreed to settle these disputes through legislation.

At the time S. 1507 was introduced last July, two other parties in the disputes—the City of Escondido, California, and the Escondido Mutual Water Company—also supported the legislation. Just this week I received word directly from the City and Escondido Mutual that Escondido no longer supports the legislation and will not testify at this hearing. A negotiated and legislative settlement is still in the long-term best interests of Escondido, and I am hopeful the city and water company will reconsider their decision.

Mr. Chairman, I anticipate that other witnesses this morning will go into some detail about the background of these disputes, so rather than repeating them I'd like to submit a summary of the situation for the record.

By way of background, commencing in the mid-1870's certain lands in the San Luis Rey River Basin were set aside as Indian Reservations. Later when the Escondido Irrigation District was formed and plans were made to build a canal to divert water from the San Luis Rey River to the Escondido Valley, the District had to obtain rights-of-way across the government land, including the Indian Reservations. Such rights were granted in 1894.

When the Escondido Irrigation District failed in 1905, all its assets were acquired by the Escondido Mutual Water Company. In 1914 the Secretary of Interior, acting on behalf of the Indians, entered into a water rights contract with the Mutual Water Company. In 1922, again on behalf of the Indians, the

federal government entered into a contract with William Henshaw which allowed him to build a storage dam and reservoir on the upper San Luis Rey River and divert the water from the basin. In 1946 the Vista Irrigation District acquired Henshaw Dam, the 43,000 acres of surrounding land, and the water rights.

The Indian Bands are now in the Court of Claims seeking damages from the federal government for failure to protect their water rights. The parties are preparing for pretrial submissions covering all the issues in the case. Once these submissions are complete a date for trial of both liability and damages will be set.

In a second proceeding, the Federal District Court in San Diego ruled that the 1894 contract with Escondido was partially invalid and that the 1914 contract with Escondido and 1922 contract between Henshaw and the federal government were invalid insofar as they limit the Indians' land and water rights. Escondido and Vista are seeking to have this decision appealed. The matter is now before the Ninth Circuit Court.

There is a third legal issue involving power facilities which use San Luis Rey River water. In 1924 the Federal Power Commission granted the Escondido Mutual Water Company a fifty-year license for Project 176 which includes the Escondido Canal and the Rincon and Bear Valley power plants and Lake Wohlford as project works. In 1971 Escondido applied for a new license for Project 176 and in 1972 the five Indian tribes filed a competing non-power license application. In 1972 the Secretary of Interior also filed a recommendation that the United States take over the Project 176 at the expiration of Escondido's original license. In November 1979 the Federal Energy Regulatory Commission issued an opinion substantially reaffirming its earlier decision to issue a new license jointly to the City of Escondido, the Escondido Mutual Water Company and the Vista Irrigation District. All parties have filed petitions for review of FERC's decision with the Circuit Court of Appeals.

Mr. Chairman, it's my understanding that this Administration wants to resolve long-standing disputes over water rights through negotiation—and legislation whenever possible rather than through protracted litigation. This is the purpose of S. 1507.

Mr. Chairman, S. 1507 would settle all the water rights disputes and outstanding legal issues. As originally introduced, it was estimated that the legislation would cost the federal government $118 million, a price tag which I indicated at the time was unrealistic, especially considering the need to control inflation and trim the federal budget.

Since July 1979, the parties have negotiated with the Departments of Interior and Justice to revise S. 1507 so that it would continue to meet the reasonable needs of all parties, but at a more modest cost.

At this time, I would like to outline the provisions of S. 1507 and the changes needed to bring the bill into conformity with the agreements contemplated in these negotiations. First, the bill provides that Escondido Mutual Water Company transfer its claimed water rights on the San Luis Rey River (about 7,300 acre feet of water per year) and the Escondido Canal to the Federal government for a sum of money. The federal government would take over Escondido's license to operate Project 176. In addition, Escondido would be granted water sufficient to maintain Lake Wohlford for recreational purposes. I continue to support this provision of the bill. However, Escondido and the Department of Interior are in disagreement over the amount of the settlement.

It's my understanding that the Interior Department would support a payment of $4.5 million to Escondido, but that Escondido is seeking considerably more (about $8.8 million). I hope that Escondido will resume negotiations with the government on the dollar amount so that the settlement can be completed.

Second, the legislation provides that Vista transfer all its rights to the federal government and all its land at Henshaw Dam (about 43,000 acres) for a sum of money. Under the bill operation and rehabilitation of the dam, which was declared unsafe in 1971 by the California Department of Safety of Dams, would be the responsibility of the federal government. The 43,000 acres of land above Henshaw Dam would be set aside for open space and recreational use.

Since the introduction of S. 1507, the parties have agreed in principal to an alternative settlement of Vista's claims. Under this revised settlement, the Vista Irrigation District would enter into a contract authorized by the Congress with the Secretary of the Interior and the Indian bands, allocating the waters of San Luis Rey River between them. Vista would reconstruct Henshaw Dam and allow the Indians to store water in the facility. This is now possible since on November 6 the voters approved a $7 million bond issue for rehabilitation work.

In addition, the Indians would receive 50 percent of the net safe yield of the underground well field above Henshaw Dam, paying the proportionate share of pumping costs. Finally, Vista has agreed to place deed restrictions on its 43,000 acres of upstream watershed lands to keep them in open space so that water quality and quantity will be maintained. In return, Vista would receive a sum of money (the government proposes $3 million) for renovation and expansion of the well fields as well as the rights to buy the excess water of the Indians. This agreement eliminates the necessity of the federal government purchasing the 43,000 acres of land and restoring Henshaw Dam, thus substantially reducing the total federal cost involved in the legislation. I understand the Administration supports these provisions, and I recommend that the bill be amended accordingly.

Finally, S. 1507 provides that the federal government help with the development of Indian lands with the Indians' water rights and additional facilities acquired from Escondido and Vista under the bill. In addition, the bill provides that the federal government pay the five bands of Indians a sum of money to settle the damage claims pending in the Court of Claims, the Ninth Circuit Court, and before FERC. The United States and the Indian bands would also relinquish their claims for damages against Escondido and Vista.

The federal government has actively discussed a payment of $12.7 million to the Indians as a settlement to the outstanding monetary claims, and an additional allocation of $10 million of development funds to the five bands as part of the settlement agreement, though I understand this may not be the Administration's final position. The Indians believe that the monetary compensation should be closer to $20 million than the figure proposed by the Administration and that economic development funds should be greater, although not all these funds need be forthcoming at once. While the Indians and the Administration have not reached a final agreement of these amounts, I understand both are willing to continue to negotiate.

Mr. Chairman, as I indicated earlier, the bill as originally introduced would have cost somewhere close to $118 million. It was introduced as a starting point for negotiations. I am gratified that the price tag of the proposed revised legislative settlement which I've just outlined is considerably less, at the most $50 million. And given the important question of the liability of the federal government for allowing the waters of the San Luis Rey River to be diverted, payments probably will be made by the federal government in any case.

I want to emphasize that there is a tremendous public interest in settling these San Luis Rey River water rights disputes through legislation. As long as the litigation is unresolved, there is a question about whether Henshaw Dam can be repaired. Currently there is the inability of storing more than 10,000 acre feet of water behind Henshaw Dam and the need to provide flood control to the people living along the San Luis Rey River. This has been particularly evident with the recent torrential rains in Southern California and the spilling of $5 million worth of water from Henshaw Dam. And there is a public interest in permitting the economic development of the Indians' lands to proceed on a stable basis.

Thus, I hope that the Committee will look favorably upon the legislation with the amendments suggested, providing the parameters of a negotiated settlement.

Thank you.

Senator COHEN. Our next witness is Mr. Ralph Reeser, who is accompanied by Daniel Rosenfelt. Apparently you are substituting on behalf of Sidney Mills.

Mr. REESER. Yes, sir.

STATEMENT OF RALPH REESER, DIRECTOR, OFFICE OF LEGISLATIVE AND CONGRESSIONAL AFFAIRS, BUREAU OF INDIAN AFFAIRS; ACCOMPANIED BY DANIEL ROSENFELT, ASSISTANT SOLICITOR, DIVISION OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. REESER. Mr. Chairman, as has been indicated, there is no settlement among the parties yet, and we therefore strongly oppose the enactment of S. 1507.

Senator COHEN. Would you repeat that, please?

Mr. REESER. As has been indicated, there is no settlement agreement among the parties involved in the dispute which S. 1507 addresses. Therefore, we strongly oppose the enactment of S. 1507 as introduced. We are currently participating in an effort to arrive at a settlement. However, a settlement has not yet been reached and we are not able to make specific legislative recommendations.

In implementing President Carter's water policy message of June 6, 1978,[1] this Department has embarked upon an effort to encourage the resolution of water rights disputes between Indians and non-Indians in the West through negotiation rather than litigation. We are firmly convinced that it is in the national interest to facilitate the prompt and orderly resolution of water rights disputes. At the same time, settlements must be genuine compromises with substantial local contributions rather than Federal buyouts. We believe that negotiations among the parties in this dispute will result in a settlement agreement which reflects these considerations.

Senator COHEN. Mr. Reeser, how long have they been negotiating now?

Mr. REESER. About 2 years.

Senator COHEN. Two years. Did your Department support the bill when it was introduced?

Mr. REESER. No, sir.

Senator COHEN. Have you opposed it from the beginning?

Mr. REESER. This is the first time we have taken a stand on the bill.

S. 1507 would provide for the settlement of a water rights dispute among the city of Escondido, Calif., the Escondido Mutual Water Co., the Vista Irrigation District, and five bands of Mission Indians who will be testifying today. At issue is the primary water supply of 100,000 people, the economic development of five Indian reservations, flood control protection for a 30-mile stretch of the San Luis Rey River, the settlement of three expensive and protracted lawsuits, and resolutions of multimillion-dollar claims against the United States.

S. 1507 would provide for Federal financing of the reconstruction of Henshaw Dam; the purchase of 43,000 acres of land for open space; the purchase of Escondido's water rights; the settlement of the Indian claims; and the development of the five Indian reservations. The bill as introduced would cost the United States approximately $118 million, and would result in the Federal Government's assuming responsibility for what are now non-Federal obligations.

Senator COHEN. In view of Senator Cranston's statement that he has succeeded—or the parties have succeeded—in reducing it down to about $50 million, does that provision of your statement remain, the $118 million figure?

Mr. REESER. That is the bill as introduced. There is no settlement among the parties so we are not yet ready to state a figure that we would be willing to——

Senator COHEN. Well, I was just wondering why Senator Cranston, who is the one who introduced the bill, said it was a $118 million project at that time and that is now down to $50 million. Would that reduce your opposition to it?

Mr. REESER. No, sir.

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[1] Follows oral testimony. See p. 23.

Senator COHEN. So, your opposition is not based on the money factor.

Mr. REESER. Partly, but it is principally the fact that we don't feel that there is a settlement agreement that we can say is fair to the local governments and water districts, to the Indians, and to the United States.

Senator COHEN. Would you continue, sir.

Mr. REESER. In the mid-1870's, certain lands in the San Luis Rey River basin in northern San Diego County, Calif., were set aside by Executive order as Indian reservations. In 1891, they were made permanent by legislation.

In 1889, the residents of Escondido Valley formed the Escondido Irrigation District, which undertook to divert water out of the San Luis Rey River watershed and transport it by canal to the Escondido Valley. In 1894 and 1908, the Secretary of the Interior executed or approved various documents purporting to grant canal rights-of-way across three of the Indian reservations. It was then constructed. The validity of these documents is now at issue, as is the validity of the contracts entered into by the United States on behalf of the Indian bands, with the Escondido Mutual Water Co. in 1914, and with William Henshaw in 1922.

Three legal proceedings have resulted from the dispute. They are unusually complex and burdensome, raising many novel questions of law. In an action began in 1950 before the Indian Claims Commission and transferred in 1976 to the Court of Claims, the Indian bands were seeking damages from the Federal Government for alleged failure to protect their water rights. In a second case, a Federal district court has ruled the 1894, 1914, and 1922 contracts void to the extent that they purport to affect the water rights of the bands involved, and a 1908 right-of-way permit invalid. The decision is being appealed. The third case before the Federal Energy Regulatory Commission resulted in the issuance of a joint license to three of the parties. All parties, including the Indian bands and the Federal Government seek judicial review of that decision.

Senator COHEN. What is the potential liability of the United States in that lawsuit? What is the damage claim for, how much?

Mr. ROSENFELT. In the court proceeding?

Senator COHEN. The one that was begun in 1950 and transferred to the Court of Claims in 1976.

Mr. ROSENFELT. To my knowledge, no figure has been stated by the bands as a formal position. Their attorneys could answer.

Senator COHEN. Is the Justice Department handling that?

Mr. ROSENFELT. Yes; they are defending that.

Senator COHEN. Your department is working with the Justice Department, advising them about the validity or lack of validity of the claim, I assume.

Mr. ROSENFELT. We have had some involvement, but that case is not very far advanced; it is not even beyond the pretrial stage yet.

Senator COHEN. Even though it was begun in the 1950's?

Mr. REESER. Since 1979, the Interior and Justice Departments and the other parties have been engaged in an effort to come up with a legislative proposal which will meet the reasonable needs of all parties at a reasonable cost. The parties had reached general agree-

ment on the basic concepts and on some details of a settlement but they had not yet reached final agreement. Then, on February 6, 1980, counsel for the city of Escondido and the Escondido Mutual Water Co. advised us that "Escondido is withdrawing from the negotiations and will not support the pending legislation." We regard this decision as a temporary setback and are confident that all parties will find a mutually agreeable settlement in their long-term best interests.

A summary of the elements of the settlement principles currently being considered are set out in more detail in our report to the committee. As noted earlier, several major issues remain unresolved, including the amount of any payments or contributions by the concerned parties including the Federal Government.

This concludes my statement. Assistant Solicitor Daniel Rosenfelt and I would be happy to answer any questions you may have.

Senator COHEN. Well, I was intrigued that a suit that had been started in 1950 and transferred in 1976, that negotiations were only undertaken in July 1979. How do you account for that? You don't apparently have any kind of a fix, for example, on how the Interior Department has evaluated the monetary claims of the tribes. What was the appraisal of those claims? You don't seem to have any idea about that.

Mr. ROSENFELT. Well, the Interior Department has taken no position on that.

Senator COHEN. You have got to take some position if you have a suit that is filed against the United States with a potential liability for violation of Federal obligation. You have got to have some assessment: No. 1, of the merit of the claims, and No. 2, of potential liability. If you are going to talk about settling—you can't talk about settling a case unless you have some appreciation of what the scope of the liability would be. From 1950 to 1980? Thirty years?

Mr. ROSENFELT. There has been no decision, no official position. The Department of Justice maintains that there is no liability, but there is no official position of the administration or of Interior.

Senator COHEN. The Department of Justice maintains there is no liability on the part of the United States? Do you support that position? I assume that the Department of Interior has specialists dealing with Indian law in your department. Do you feel the same way, that there is no liability?

Mr. ROSENFELT. Well, Senator, all of us have personal views and I have a personal view, but it is not the Department's view.

Senator COHEN. Does the Department have any view?

Mr. ROSENFELT. No, sir, it does not at this time.

Senator COHEN. How much does it cost to develop the Indian lands for citrus and avocado like those of the lands of the non-Indian neighbors? How much would it cost?

Mr. ROSENFELT. The bands have prepared a development plan which, I believe, would encompass 6,000 acres and would cost something on the order of $18 million.

Senator COHEN. What about the Henshaw Dam we heard Senator Cranston talk about? What is its condition? Does it need to be reconstructed?

Mr. ROSENFELT. Definitely.

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Senator COHEN. Is there a present danger now in its current condition?

Mr. ROSENFELT. Yes, I believe so, sir.

Senator COHEN. So, wouldn't that militate toward trying to achieve a settlement as quickly as possible rather than dragging this thing out any longer?

Mr. ROSENFELT. I believe so, and I think the Department, as it says in our statement, does support the concept of the settlement in this case.

Senator COHEN. Is it possible, or feasible, in your judgment, to make those reconstruction needs for the Henshaw Dam and still continue to negotiate the settlement? Do you have to wait until it is finally completed, or do you think it is possible to go forward and take some safety measures?

Mr. ROSENFELT. Well, the Vista Irrigation District will talk more about this. Generally they are planning to finance this through the issuance of bonds and to proceed with construction. They are encountering some difficulties because these cases are not settled, but they are hoping to proceed as Mr. Wright, I am sure, will explain, but using their own funds, not Federal funds, to do that.

Senator COHEN. The Justice Department has taken the position that there is no U.S. liability, but you are disappointed that the city of Escondido and the Mutual Water Co. have pulled out. You don't think there is any liability on the part of the United States. What leverage do you think you are going to have to encourage them to settle?

Mr. ROSENFELT. The United States has substantial claims against Escondido and Escondido Mutual, very substantial, and they are in a situation where, if litigation goes forward and they do not succeed, they will find, perhaps, that they are no longer able to operate the canal, that their water rights are indeed junior to that of the Indians, and they will be in a much worse position than they are today.

Senator COHEN. Could you provide the committee with an official statement of the administration's policy in regard to the settlement of Indian water rights and development of Indian water rights? Do you have an official statement on that that can be submitted?

Mr. ROSENFELT. We will furnish an official statement for the record.

[Subsequent to the hearing the following communication was received:]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 4, 1980.

Re S. 1507.

Hon. JOHN MELCHER,
Chairman, Select Committee on Indian Affairs,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: In hearings before your committee on March 6, 1980, this Department was requested to submit a statement concerning the Administration's policy on the settlement of water rights controversies. We are pleased to comply with that request.

In his water policy message to the Congress of June 6, 1978, President Carter instructed federal agencies "to work promptly and expeditiously to inventory and quantify federal reserved and Indian water rights." This effort, said the President, "should emphasize negotiations rather than litigation wherever possible." On the same date the White House issued a detailed background statement amplifying the President's water policy message. With respect to Indian water rights, the detailed background emphasized that "the President strongly

favors a negotiation process [rather than litigation]." Copies of the President's message and detailed background are attached.

As a result of the President's water policy message of June 6, the Department of Interior is embarked on a program to facilitate resolution of water rights disputes through negotiations wherever possible. To facilitate the negotiation process where Indian rights are concerned, the Bureau of Indian Affairs of the Department of Interior is undertaking a review of Indian water claims over the next ten years. The information developed through this systematic review can be used by the tribes and the Department of Interior for purposes of negotiation. Further, to facilitate the negotiation process this Department has developed special procedures to be used in evaluating projects for the development of Indian water resources in order that Indian water development may be increased in conjunction with the resolution of Indian water rights disputes. An important part of our negotiation policy is the provision of resources to increase Indian water development.

We are reviewing disputes presently before this Department or in litigation to determine whether they are susceptible to negotiated settlement. In doing so, we expect negotiated settlements to be genuine compromises with significant and demonstrable local contributions rather than federal buyouts. We recognize that not every case or controversy is susceptible to a reasonable negotiated settlement. In some instances the claims of one or more parties may be unrealistically high, in other instances the controversy may turn on the resolution of a legal question which can best be determined by the courts, and in still other instances the cost of settlement to the United States may be totally disproportionate to the benefits received from the settlement itself.

In carrying out our policy of promoting negotiated settlements we recognize that the title to rights to the use of water held by or for American Indian tribes differs fundamentally from federal non-Indian reserved water rights. The property interests of the Indians, although held by the United States, are not for the benefit of the general public but for the benefit of the Indians. The executive branch has no authority to negotiate away known Indian rights without the approval of the affected tribe and the Congress. As a matter of policy, we will not enter into any settlement negotiations designed to bring about quantification of Indian water rights without the approval of the affected Indian tribe or tribes.

Within the constraints sketched in this statement, we believe that many parties to water rights controversies in the west will find it in their long term best interests to resolve their disputes through negotiation rather than litigation. Where these conditions obtain, this Department will take affirmative action to promote negotiated settlements. I hope the information in this statement will be helpful to you.

Sincerely,

SIDNEY L. MILLS,
Deputy Assistant Secretary.

WATER POLICY INITIATIVES

June 6, 1978.

OFFICE OF THE WHITE HOUSE PRESS SECRETARY,
THE WHITE HOUSE.

To the Congress of the United States

I am today sending to Congress water policy initiatives designed to:

Improve planning and efficient management of Federal water resource programs to prevent waste and to permit necessary water projects which are cost-effective, safe and environmentally sound to move forward expeditiously;

Provide a new, national emphasis on water conservation;

Enhance Federal-State cooperation and improved State water resources planning; and

Increase attention to environmental quality.

None of the initiatives would impose any new federal regulatory program for water management.

Last year, I directed the Water Resources Council, the Office of Management and Budget and the Council on Environmental Quality, under the chairmanship of Secretary Cecil Andrus, to make a comprehensive review of Federal water policy and to recommend proposed reforms.

This new water policy results from their review, the study of water policy ordered by the Congress in Section 80 of the Water Resources Planning Act of

1974 and our extensive consultations with members of Congress, State, county, city and other local officials and the public.

Water is an essential resource, and over the years, the programs of the Bureau of Reclamation, the Corps of Engineers, the Soil Conservation Service and the Tennessee Valley Authority have helped permit a dramatic improvement in American agriculture, have provided irrigation water essential to the development of the West, and have developed community flood protection, electric power, navigation and recreation throughout the Nation.

I ordered this review of water policies and programs because of my concern that while Federal water resources programs have been of great benefit to our Nation, they are today plagued with problems and inefficiencies. In the course of this water policy review we found that:

Twenty-five separate Federal agencies spend more than $10 billion per year on water resources projects and related programs.

These projects often are planned without a uniform, standard basis for estimating benefits and costs.

States are primarily responsible for water policy within thir boundaries, yet are not integrally involved in setting priorities and sharing in Federal project planning and funding.

There is a $34 billion backlog of authorized or uncompleted projects.

Some water projects are unsafe or environmentally unwise and have caused losses of natural streams and rivers, fish and wildlife habitat and recreational opportunities.

The study also found that water conservation has not been addressed at a national level even though we have pressing water supply problems. Of 106 watershed subregions in the country, 21 already have severe water shortages. By the year 2000 this number could increase to 39 subregions. The Nation's cities are also beginning to experience water shortage problems which can only be solved at very high cost. In some areas, precious groundwater supplies are also being depleted at a faster rate than they are replenished. In many cases an effective water conservation program could play a key role in alleviating these problems.

These water policy initiatives will make the Federal government's water programs more efficient and responsive in meeting the Nation's water-related needs. They are designed to build on fundamentally sound statutes and on the Principles and Standards which govern the planning and development of Federal water projects, and also to enhance the role of the States, where the primary responsibilities for water policy must lie. For the first time, the Federal government will work with State and local governments and exert needed national leadership in the effort to conserve water. Above all, these policy reforms will encourage water projects which are economically and environmentally sound and will avoid projects which are wasteful or which benefit a few at the expense of many.

Across the Nation there is remarkable diversity in the role water plays. Over most of the West, water is scarce and must be managed carefully—and detailed traditions and laws have grown up to govern the use of water. In other parts of the country, flooding is more of a problem than drought, and in many areas, plentiful water resources have offered opportunities for hydroelectric power and navigation. In the urban areas of our Nation, water supply systems are the major concern—particularly where antiquated systems need rehabilitation in order to conserve water and assure continued economic growth.

Everywhere, water is fundamental to environmental quality. Clean drinking water, recreation, wildlife and beautiful natural areas depend on protection of our water resources.

Given this diversity, Federal water policy cannot attempt to prescribe water use patterns for the country. Nor should the Federal government preempt the primary responsibility of the States for water management and allocation. For those reasons, these water policy reforms will *not* preempt State or local water responsibilities. Yet water policy is an important national concern, and the Federal government has major responsibilities to exercise leadership, to protect the environment and to develop and maintain hydroelectric power, irrigated agriculture, flood control and navigation.

The primary focus of the proposals is on the water resources programs of the Corps of Engineers, the Bureau of Reclamation, the Soil Conservation Service and the Tennessee Valley Authority, where annual water program budgets total approximately $3.75 billion. These agencies perform the federal government's

water resource development programs. In addition, a number of federal agencies with water-related responsibilities will be affected by this water policy.

I am charging Secretary Andrus with the lead responsibility to see that these initiatives are carried out promptly and fully. With the assistance of the Office of Management and Budget and the Council on Environmental Quality, he will be responsible for working with the other Federal agencies, the Congress, State and local governments and the public to assure proper implementation of this policy and to make appropriate recommendations for reform in the future.

SPECIFIC INITIATIVES IMPROVING FEDERAL WATER RESOURCE PROGRAMS

The Federal government has played a vital role in developing the water resources of the United States. It is essential that Federal water programs be updated and better coordinated if they are to continue to serve the nation in the best way possible. The reforms I am proposing are designed to modernize and improve the coordination of federal water programs. In addition, in a few days, I will also be sending to the Congress a Budget amendment proposing funding for a number of new water project construction and planning starts. These projects meet the criteria I am announcing today. This is the first time the Executive Branch has proposed new water project starts since Fiscal Year 1975, four years ago.

The actions I am taking include:

A directive to the Water Resources Council to improve the implementation of the Principles and Standards governing the planning of Federal water projects. The basic planning objectives of the Principles and Standards—national economic development and environmental quality—should be retained and given equal emphasis. In addition, the implementation of the Principles and Standards should be improved by:

Adding water conservation as a specific component of both the economic and environmental objectives;

Requiring the explicit formulation and consideration of a primarily nonstructural plan as one alternative whenever structural water projects or programs are planned;

Instituting consistent, specific procedures for calculating benefits and costs in compliance with the Principles and Standards and other applicable planning and evaluation requirements. Benefit-cost analyses have not been uniformly applied by Federal agencies, and in some cases benefits have been improperly recognized, "double-counted" or included when inconsistent with federal policy or sound economic rationale. I am directing the Water Resources Council to prepare within 12 months a manual which ensures that benefits and costs are calculated using the best techniques and provides for consistent application of the Principles and Standards and other requirements;

Ensuring that water projects have been planned in accordance with the Principles and Standards and other planning requirements by creating, by Executive Order, a project review function located in the Water Resources Council. A professional staff will ensure an impartial review of pre-construction project plans for their consistency with established planning and benefit-cost analysis procedures and applicable requirements. They will report on compliance with these requirements to agency heads, who will include their report, together with the agency recommendations, to the Office of Management and Budget. Project reviews will be completed within 60 days, before the Cabinet officers makes his or her Budget request for the coming fiscal year. Responsibility will rest with the Cabinet officer for Budget requests to the Office of Management and Budget, but timely independent review will be provided. This review must be completed within the same budget cycle in which the Cabinet Officer intends to make Budget requests so that the process results in no delay.

The manual, the Principles and Standards requirements and the independent review process will apply to all authorized projects (and separable project features) not yet under construction.

Establishment of the following criteria for setting priorities each year among the water projects eligible for funding or authorization, which will form the basis of my decisions on specific water projects:

Projects should have net national economic benefits unless there are environmental benefits which clearly more than compensate for any eco-

nomic deficit. Net adverse environmental consequences should be significantly outweighed by economic benefits. Generally, projects with higher benefit/cost ratios and fewer adverse environmental consequences will be given priority within the limits of available funds.

Projects should have widely distributed benefits.

Projects should stress water conservation and appropriate non-structural measures.

Projects should have no significant safety problems involving design, construction or operation.

There should be evidence of active public support including support by State and local officials.

Projects will be given expedited consideration where State governments assume a share of costs over and above existing cost-sharing.

There should be no significant international or inter-governmental problems.

Where vendible outputs are involved preference should be given to projects which provide for greater recovery of Federal and State costs, consistent with project purposes.

The project's problem assessment, environmental impacts, costs and benefits should be based on up-to-date conditions (planning should not be obsolete).

Projects should be in compliance with all relevant environmental statues.

Funding for mitigation of fish and wildlife damages should be provided concurrently and proportionately with construction funding.

Preparation of a legislative proposal for improving cost-sharing for water projects. Improved cost-sharing will allow States to participate more actively in project decisions and will remove biases in the existing system against non-structural flood control measures. These changes will help assure project merit. This proposal, based on the study required by Section 80 of P.L. 93-251, has two parts:

Participation of States in the financing of federal water project construction. For project purposes with vendible outputs (such as water supply or hydroelectric power), States would contribute 10% of the costs, proportionate to and phased with federal appropriations. Revenues would be returned to the States proportionate to their contribution. For project purposes without vendible outputs (such as flood control), the Senate financing share would be 5%. There would be a cap on State participation per project per year of ¼ of 1% of the State's general revenues so that a small State would not be precluded from having a very large project located in it. Where project benefits accrue to more than one State, State contributions would be calculated accordingly, but if a benefiting State did not choose to participate in cost-sharing, its share could be paid by other participating States. This State cost-sharing proposal would apply on a mandatory basis to projects not yet authorized. However, for projects in the authorized backlog, States which voluntarily enter into these cost-sharing arrangements will achieve expedited Executive Branch consideration and priority for project funding, as long as other project planning requirements are met. Soil Conservation Service projects will be completely exempt from this State cost-sharing proposal.

Equalizing cost-sharing for structural and non-structural flood control alternatives. There is existing authority for 80%-20% Federal/non-Federal cost-sharing for non-structural flood control measures (including in-kind contributions such as land and easements). I will begin approving non-structural flood control projects with this funding arrangement and will propose that a parallel cost-sharing requirement (including in-kind contributions) be enacted for structural flood control measures, which currently have a multiplicity of cost-sharing rules.

Another policy issue raised in Section 80 of P.L. 93-251 is that of the appropriate discount rate for computing the present value of future estimated economic benefits of water projects. After careful consideration of a range of options I have decided that the currently legislated discount rate formula is reasonable, and I am therefore recommending that no change be made in the current formula. Nor will I recommend retroactive changes in the discount rate for currently authorized projects.

WATER CONSERVATION

Managing our vital water resources depends on a balance of supply, demand and wise use. Using water more efficiently is often cheaper and less damaging to

the environment than developing additional supplies. While increases in supply will still be necessary, these reforms place emphasis on water conservation and make clear that this is now a national priority.

In addition to adding the consideration of water conservation to the Principles and Standards, the initiatives I am taking include:

Directives to all Federal agencies with programs which affect water supply or consumption to encourage water conservation, including:

Making appropriate community water conservation measures a condition of the water supply and wastewater treatment grant and loan power of the Evironmental Protection Agency to the Department of Agriculture and the Department of Commerce;

Integrating water conservation requirements into the housing assistance programs of the Department of Housing and Urban Development, the Veterans Administration and the Department of Agriculture;

Providing technical assistance to farmers and urban dwellers on how to conserve water through existing programs of the Department of Agriculture, the Department of Interior and the Department of Housing and Urban Development;

Requiring development of water conservation programs as a condition of contracts for storage or delivery of municipal and industrial water supplied from federal projects;

Requiring the General Services Administration, in consultation with affected agencies, to establish water conservation goals and standards in Federal buildings and facilities;

Encouraging water conservation in the agricultural assistance programs of the Department of Agriculture and the Department of Interior which affect water consumption in water-short areas; and

Requesting all Federal agencies to examine their programs and policies so that they can implement appropriate measures to increase water conservation and re-use.

A directive to the Secretary of the Interior to improve the implementation of irrigation repayment and water service contract procedures under existing authorities of the Bureau of Reclamation. The Secretary will:

Require that new and renegotiated contracts include provisions for recalculation and renegotiation of water rates every five years. This will replace the previous practice of 40-year contracts which often do not reflect inflation and thus do not meet the beneficiaries' repayment obligations;

Under existing authority add provisions to recover operation and maintenance costs when existing contracts are renegotiated, or earlier where existing contracts have adjustment clauses;

More precisely calculate and implement the "ability to pay" provision in existing law which governs recovery of a portion of project capital costs.

Preparation of legislation to allow States the option of requiring higher prices for municipal and industrial water supplies from Federal projects in order to promote conservation, provided that State revenues in excess of Federal costs would be returned to municipalities or other public water supply entities for use in water conservation or rehabilitation of water supply systems.

FEDERAL-STATE COOPERATION

States must be the focal point for water resource management. The water reforms are based on this guiding principle. Therefore, I am taking several initiatives to strengthen Federal-State relations in the water policy area and to develop a new, creative partnership. In addition to proposing that States increase their roles and responsibilities in water resources development through cost-sharing, the actions I am taking include:

Proposing a substantial increase from $3 million to $25 million annually in the funding of State water planning under the existing 50%–50% matching program administered by the Water Resources Council. State water planning would integrate water management and implementation programs which emphasize water conservation and which are tailored to each State's needs including assessment of water delivery system rehabilitation needs and development of programs to protect and manage groundwater and instream flows.

Preparation of legislation to provide $25 million annually in 50%–50% matching grant assistance to States to implement water conservation technical assistance programs. These funds could be passed through to counties

and cities for use in urban or rural water conservation programs. This program will be administered by the Water Resources Council in conjunction with matching grants for water resources planning.

Working with Governors to create a Task Force of Federal, State, county, city and other local officials to continue to address water-related problems. The administrative actions and legislative proposals in this Message are designed to initiate sound water management policy at the national level. However, the Federal government must work closely with the States, and with local governments as well, to continue identifying and examining water-related problems and to help implement the initiatives I am announcing today. This Task Force will be a continuing guide as we implement the water policy reforms and will ensure that the State and local role in our Nation's water policy is constant and meaningful.

An instruction to Federal agencies to work promptly and expeditiously to inventory and quantify Federal reserved and Indian water rights. In several areas of the country, States have been unable to allocate water because these rights have not been determined. This quantification effort should focus first on high priority areas, should involve close consultation with the States and water users and should emphasize negotiations rather than litigation wherever possible.

ENVIRONMENTAL PROTECTION

Water is a basic requirement for human survival, is necessary for economic growth and prosperity, and is fundamental to protecting the natural environment. Existing environmental statutes relating to water and water projects generally are adequate, but these laws must be consistently applied and effectively enforced to achieve their purposes. Sensitivity to environmental protection must be an important aspect of all water-related planning and management decisions. I am particularly concerned about the need to improve the protection of instream flows and to evolve careful management of our nation's precious groundwater supplies, which are threatened by depletion and contamination.

My initiatives in this area include the following:

A directive to the Secretary of the Interior and other Federal agency heads to implement vigorously the Fish and Wildlife Coordination Act, the Historic Preservation Act and other environmental statutes. Federal agencies will prepare formal implementing procedures for the Fish and Wildlife Coordination Act and other statutes where appropriate. Affected agencies will prepare reports on compliance with environmental statutes on a project-by-project basis for inclusion in annual submissions to the Office of Management and Budget.

A directive to agency heads requiring them to include designated funds for environmental mitigation in water project appropriation requests to provide for concurrent and proportionate expenditure of mitigation funds.

Accelerated implementation of Executive Order No. 11988 on floodplain management. This Order requires agencies to protect floodplains and to reduce risks of flood losses by not conducting, supporting or allowing actions in floodplains unless there are no practicable alternatives. Agency implementation is behind schedule and must be expedited.

A directive to the Secretaries of Army, Commerce, Housing and Urban Development and Interior to help reduce flood damages through acquisition of flood-prone land and property, where consistent with primary program purposes.

A directive to the Secretary of Agriculture to encourage more effective soil and water conservation through watershed programs of the Soil Conservation Service by:

Working with the Fish and Wildlife Service to apply fully the recently-adopted stream channel modification guidelines;

Encouraging accelerated land treatment measures prior to funding of structural measures on watershed projects, and making appropriate land treatment measures eligible for Federal cost-sharing;

Establishing periodic post-project monitoring to ensure implementation of land treatment and operation and maintenance activities specified in the work plan and to provide information helpful in improving the design of future projects.

A directive to Federal agency heads to provide increased cooperation with States and leadership in maintaining instream flows and protecting groundwater through joint assessment of needs, increased asssistance in the gathering

and sharing of data, appropriate design and operation of Federal water facilities, and other means. I also call upon the Governors and the Congress to work with Federal agencies to protect the fish and wildlife and other values associated with adequate instream flows. New and existing projects should be planned and operated to protect instream flows, consistent with State law and in close consultation with States. Where prior commitments and economic feasibility permit, amendments to authorizing statutes should be sought in order to provide for streamflow maintenance.

CONCLUSION

These initiatives establish the goals and the framework for water policy reform. They do so without impinging on the rights of States and by calling for a closer partnership among the Federal, State, county, city and other local levels of government. I want to work with the Congress, State and local governments and the public to implement this policy. Together we can protect and manage our nation's water resources, putting water to use for society's benefit, preserving our rivers and streams for future generations of Americans, and averting critical water shortages in the future through adequate supply, conservation and wise planning.

JIMMY CARTER.

THE WHITE HOUSE, *June 6, 1978.*

Senator COHEN. I would like to yield to the real chairman of the committee, Mr. Melcher, who will take over as the chairman.

Senator MELCHER. Thank you, Senator, I really have no questions of the witnesses at this time.

Our next witness is Leroy Wright, attorney for Vista Irrigation District.

Senator COHEN. Let me say, Mr. Chairman, that I appreciate the delicacy of the last two witnesses in view of the fact that it is not only the Department of Interior, but we have the Deparment of Justice on the one hand and the department of OMB, I suspect, on the other, all of which puts them in a precarious situation as far as making an assessment of the merits, the liabilities, the potential exposure of the United States. I would just say, for myself, that I don't know who we are going to achieve a settlement under these conditions unless the Department of Interior is willing to make some recommendation, I would think, to the Justice Department and to this committee to help us evaluate whether or not we should proceed to try and vote to come up with a legislative solution to the problem or to simply have it continued. It has been going on now for 30 years, and it doesn't seem to be that much closer to resolution. I suspect that Senator Cranston has introduced the measure to see if he couldn't push it forward to some kind of a conclusion.

Senator MELCHER. Thank you. Please proceed, Mr. Wright.

STATEMENT OF LEROY A. WRIGHT, ATTORNEY, GLENN, WRIGHT, JACOBS, AND SCHELL, REPRESENTING THE VISTA IRRIGATION DISTRICT

Mr. WRIGHT. Good morning, Senators Melcher and Cohen. My name is Leroy A. Wright from San Diego, Calif. I am, and have been since 1948, general counsel to the Vista Irrigation District, and through your kind invitation, I am appearing here on behalf of the district.

This morning I am accompanied by C. Emerson Duncan II of Messrs. Duncan, Allan, and Mitchell, Washington counsel for the district.

I have no prepared statement, but I would like to recount for the committee the district's posture on S. 1507. I think a few words about the district's position on the river, how it came there, and what position it occupies might be helpful to the committee.

This irrigation district was formed under the laws of California in 1923. It first started receiving water from the San Luis Rey River in 1926. This was under, at that time, the Henshaw Dam and the Water Ranch properties. They were privately owned by the San Diego County Water Co. The San Diego Water Co. had constructed Henshaw Dam in 1922. The floodgates of the dam were closed on Christmas Day of that year.

Contracts remain between that water company, the Escondido Mutual Water Co., and the Vista Irrigation District. It was to be private enterprise. The contracts with Escondido were twofold. No. 1, the prior rights of Escondido to the uncontrolled flow of the river, had Henshaw Dam not been built, was recognized as being the capacity of the diversion works which Escondido had constructed. Escondido waived any right to object to the construction of Henshaw Dam and, in addition, became the purchaser of flood waters stored behind and developed by the dam. The contracts also recognized the right of the San Diego County Water Co. to sell other waters developed by Henshaw Dam to other potential buyers and Escondido agreed to transport that water through their diversion works and then on to the lake.

Some years later, the Vista Irrigation District, which was purchasing water under contract from San Diego County Water Co., sold bonds and with the proceeds of that bond sale bought some 43,000 acres that comprise the Henshaw and Warner Ranch Valley and the Henshaw Dam. So it became the substitute for the San Diego County Water Co.

The reservoir performed well for a while, but the net safe-yield for the reservoir was grossly overestimated by the engineers and it became apparent in the early 1950's that the dam and reservoir impoundment system would not produce the water that had been permitted to be sold from it. Fortunately for the ownership of vast areas of flat valley behind the reservoir, there was developed a considerable body of ground water, and the Vista Irrigation District embarked on a program of pumping the ground water basin and diverting the water into the reservoir from which it was delivered as the same as surface storage.

Early on contracts, as has been mentioned, with the United States had been entered into which recognized in the Vista predecessor the right to construct the dam, import and export from the watershed, water developed by the dam, and to afford flood control protection to downstream property owners on the San Luis Rey River. I might say that the Henshaw Dam is the only impoundment on that river.

Those contracts are now under attack in this litigation. The theory is that the United States lacked the authority to enter into—that is, the Secretary of Interior, who purported to sign them on behalf of the Indian bands—did not have the requisite authority. It has been indicated and this is in litigation.

Senator COHEN. Excuse me; which court ruled on that particular litigation?

Mr. WRIGHT. The District Court for the Southern District of California, the U.S. District Court.

Senator COHEN. They ruled that the United States, that the Department of Interior, did not have the authority to enter into those contracts?

Mr. WRIGHT. Insofar as they purported to limit the Indians' water supply. The parties have appealed to the ninth circuit. That is an interlocutory appeal and the ninth circuit has not yet indicated whether or not it will accept the appeal.

Senator COHEN. It has not yet indicated?

Mr. WRIGHT. No, sir. Henshaw Dam is a hydraulic fill structure and it lies adjacent to the Elcinor Fault, one of the subsidiary major faults in southern California. In 1971, southern California experienced the San Fernando earthquake, of which many of you may have heard. The San Fernando Dam, lying to the northeast, just north of Los Angeles, is a similar type of structure. The earthquake movement produced what the scientists call liquefaction, which is the tendency of a solid in solution to settle, with the water rising to the top and the solid matter condensing to the bottom. That produces a slump in the hydraulic-fill type of dam. Such a phenomenon occurred in San Fernando and the city of Los Angeles almost lost the San Fernando Dam, which was then full of water.

The California State Division of Safety of Dams mandated an investigation on all such types of structures in California, including Vista. Vista's investigation produced data which, on examination by experts, indicated a susceptibility of that structure to respond similarly to seismic motion. So, there is a potential danger at higher impoundment levels. The dam would fail, given an earthquake of about 6 or 7 on the Richter scale.

The State Division of Safety of Dams has reduced the storage capacity of Henshaw Dam from 194,000 acre feet maximum capacity at present storage level to a maximum impoundment of slightly over 11,000 acre feet.

At the moment, because of rainfall conditions in southern California, of which there has been much in the press, Henshaw Dam at the moment impounds approximately 79,000 acre feet. The district has a tremendous program of releases at maximum capacity of the outlet works which run to about 500 acres per day so that it will be some time before the dam can be reconstructed and brought back down to safety level as imposed by the State Division of Safety of Dams.

That water is only added to the downstream flooding. Bridges are out and the property owners downstream want to get in and make the necessary repairs. They are not going to be able to do so this year until midyear at least.

The district is under contractual commitments to Escondido to repair the dam with reasonable promptness. In recognition of that commitment, and also the commitments made to the Indians in the earlier contract, and that Henshaw would provide downstream flood control, the district has embarked upon a program of rehabilitation of Henshaw Dam. That program encompasses work being done by the District Consulting Engineers, the State Division of Safety of Dams, and more recently, the concurrence and participation in the program of the special consulting group mandated by the Federal Energy Regulatory Commission who have indicated in a recent order that Henshaw Dam should not be rehabilitated without the consent of that Commission and that that Commission should have the benefit of

a special consulting group of engineers, experts selected by the district and approved by the Commission. That special board has been constituted, has been selected, and they have had the first meeting with the district engineers and they have scheduled additional meetings and are going right ahead with their report. So far, all reports are apparently favorable and it looks as though the engineering work will be done by late summer.

In the meantime, the district, impacted by California's proposition 13 and unable to utilize general application bonds, has bid to its supporters a proposal for revenue bonds. That received an approval of 89 percent of the voters in the district. On the present bond market, who knows whether or not those bonds will be sold. That is the only apparent source of funds of the district, but we are pursuing that without recourse to Federal financing at the moment. If it can, and it looks as if it can, those funds will be provided by the district, the contracts let, and Henshaw Dam, hopefully, will be reconstructed in advance of, and independently of, a settlment of this overall conflict.

Senator MELCHER. Mr. Wright, are you telling the committee that the voters approved by 89 percent the issuance of $7 million in bonds?

Mr. WRIGHT. Yes, sir.

Senator MELCHER. And that is adequate for the rehabilitation?

Mr. WRIGHT. If we can sell the bonds.

Senator MELCHER. Did you say if, or when, you sell the bonds?

Mr. WRIGHT. If and when. This situation of pending litigation is not at all helpful to the sale of bonds.

Senator MELCHER. Is it true that Vista would enter into a contract with the Secretary of the Interior and Indian bands allocating the water of the river between them?

Mr. WRIGHT. This is an approach to the settlement of this controversy. When the bill was first introduced, it was declared a total buyout of Henshaw properties, the Warner Ranch properties, and the Henshaw Dam. That approach became too expensive in the view of the district. It represented what we term a Federal buyout, and it was preferable from the district's standpoint that it retain those properties that are utilized for farming and agricultural purposes and also for ground-water production; that it retain Henshaw because Henshaw Dam is needed to produce the water from the river for beneficial use, and it is also needed for flood-control purposes and it is needed by several Indian bands to provide summertime storage for their water. There is no other storage on the river.

Senator MELCHER. Mr. Wright, what I am trying to get at is, what agreement has been made, or are you willing to make, in regard to the legislation before us? Do you agree to allocate the waters of the San Luis Rey?

Mr. WRIGHT. We have reached—by we I mean the Vista Irrigation District—has reached tentative agreement with the Indian bands and the Department of Interior to make such an allocation, but that agreement is conditional upon a satisfactory arrangement with respect to Escondido. Now why is that? It is because Vista, as the successor to the San Diego County Water Co., has contracts that were made in November 1912 and November 1922 with Escondido under which Escondido is afforded the right of storage in Henshaw: The right to purchase water that is developed by Henshaw, and the right to purchase ground water from the ground water basin behind the dam.

There just isn't enough water to satisfy those contractual commitments with Escondido and to recognize completely the claimed prior rights of the Indians, and to leave anything left over for Vista as owner.

Senator MELCHER. If the court of appeals considers the interlocutory appeal, or any Supreme Court decision rules that the district court was correct in invalidating those contracts, where does that leave Vista?

Mr. WRIGHT. Oh, we are talking about different contracts.

Senator MELCHER. I am talking about the three original contracts.

Mr. WRIGHT. There are two different types of contracts. The first contract was entered into by Vista in June 1922. That was with the Secretary of Interior acting on behalf of the several tribes of the Rincon and the tribes of Pala. That contract is the one that has been held partially invalid to the extent that it purported to limit the rights of those two Indian reservations.

The second contract, or two—one was made in 1912 between William Henshaw and the Escondido Mutual Water Co. recognizing Escondido's primary right to the water in the river, second, of course, to the Indians. The next contract with the Escondido was made in November 1922 under which the San Diego Water Co. which, with Escondido, were the two contracting parties, agreed to sell the water developed by Henshaw to Escondido and the Escondido Mutual Water Co. agreed to transport that water to its Lake Willford reservoir.

Then, there was a subsequent contract made in 1950 whereby the ground water from the basin was shared with Escondido. So, we have two series of contracts: one with the United States purporting to limit the Indians' rights, which is the one in litigation, and the ones with Escondido Mutual, which are not in litigation and I hope they won't be. Were we to settle with the United States now, without recognizing Escondido's rights, we would be in litigation with Escondido, a posture we do not want to assume. I mean that one is enough. That brings me to the point that I wanted to make which explains the facet of Vista's condition in its settlement discussions with the Department of Interior and the Indian bands; namely, that Escondido be satisfied and at the same time as Vista concludes a settlement, one also be concluded with Escondido.

Senator COHEN. Escondido has indicated that they are not interested in taking part in negotiations any more. Period.

Mr. WRIGHT. If Escondido doesn't settle, there is no way Vista can settle. That is the point that I wanted to make.

Senator COHEN. What is the answer?

Mr. WRIGHT. I think the persuasion of Escondido.

Senator COHEN. I could read you a letter——

Mr. WRIGHT. I want to make quite plain that Vista has reached an agreement, about which you spoke, with Interior and the Indian bands that would apportion the water between the two, which agreement is conditioned upon Escondido's settling also.

Senator COHEN. What I am trying to get at here is, I think, that everybody recognizes that they want to try and resolve this issue one way or another. It has been carrying out now, one way or another, for 30 years.

You say, on behalf of Vista, that you can't settle unless the city of Escondido settles, and Escondido writes a letter to the committee say-

ing that the proposal is unacceptable and that therefore they are withdrawing from any negotiations or settlement discussions. Where does that leave the situation? Just leave it in the courts? Is that the solution that you would——

Mr. WRIGHT. That is the only solution I can see unless Escondido is persuaded to change its mind. I would hope that they would.

Senator COHEN. You would hope that they would change their mind.

Mr. WRIGHT. Yes, sir.

Senator COHEN. What you are saying is that your support for this particular legislation would be predicated upon Escondido's agreement.

Mr. WRIGHT. Yes. Perforce, it has to be, because Vista would be faced with an intolerable situation having to choose its opponents for the courts. By settling one case, it would in effect be asking for another.

Senator COHEN. How does the litigation, assuming that this goes on in litigation, how long do you think——

Mr. WRIGHT. Pardon me. The litigation that involves Vista has not been going on for about 30 years.

Senator COHEN. I understand.

Mr. WRIGHT. That litigation was started in 1972 against Vista.

Senator COHEN. The original suit, I believe, was against the United States.

Mr. WRIGHT. The suit is in the Court of Claims as a result of the Indian Claims Commission, and it was originally docket 80–A for the Indian Claims Commission. That was the suit, a claim against the United States by which several Indian bands claimed that the United States was derelict in the performance of its duties causing damage to the Indian bands. It was recognized in the legislation authorizing the Indian Claims Commission. It is that litigation that has dragged on for so long, and was then transferred out of the Indian Claims Commission when that Commission was——

Senator COHEN. What will happen if you cannot market those bonds?

Mr. WRIGHT. We have no funds to do the work. The dam will sit there in its present condition, which poses a threat whenever it fills up with storm flows such as has happened this last week.

Senator COHEN. In economic and human terms, what kind of a threat does that pose? In other words, what kind of a threat?

Mr. WRIGHT. Millions of dollars downstream; millions. It is a condition that has to be remedied. Vista has no funds, absent the ability to market these bonds. The type of bonds, as I indicated, the general obligation bonds are no longer available although there has been introduced in the legislature of California a proposed constitutional amendment which would authorize municipal utilities such as Vista—authorize them again—to issue general obligation bonds and remove that type of issue from the prohibition of proposition 13.

Senator MELCHER. Thank you very much, Mr. Wright.

Mr. WRIGHT. I would appreciate an opportunity, if I may, to augment the record in the future.

Senator MELCHER. Yes; please do so.

Mr. WRIGHT. Thank you.

Senator MELCHER. We will hear now from Henry Rodriquez, Edward Arviso, Patricia Duro, Augustine Orosco, Lawrence Blacktooth,

and Claude Devers. Are you all here? Please approach the witness table.

It is obvious that your remarks ought to be summarized. The committee would appreciate it if there are joint agreements that those joint agreements be summarized also. Also, we have listed here the attorneys for the Mission bands. I'm not sure whether any of you are here to answer questions, or have additional statements. Please incorporate them with the remarks that will be made by these witnesses. The attorneys that are listed are Robert S. Pelcyger, Arthur J. Gajarsa, and Douglas Beck. Are they here?

Please approach the witness table at the same time. Mr. Rodriquez?

STATEMENT OF HENRY RODRIQUEZ, CHAIRMAN, SAN LUIS REY RIVER INDIAN WATER COMMITTEE; MEMBER OF THE LA JOLLA BAND OF MISSION INDIANS, VALLEY CENTER, CALIF.

Mr. RODRIQUEZ. My name is Henry Rodriquez of the La Jolla reservation. I will be as brief as I possibly can.

I am here on behalf of my chairman, Mr. Fred Belson of the La Jolla Reservation. The La Jolla Reservation consists of about 8,000 acres and about 345 membership. It is one of the five reservations that are located in the rural northern regions of San Diego County in southern California, approximately 60 miles from the coast. We have approximately 8,000 acres of which 1,589 are irrigable and around 6,000 which are nonirrigable. We are a non-IRA tribe and our articles of association were approved in 1962.

For the past 61 years of my life, I have spent 35 years in tribal affairs struggling to improve the overall general welfare of the native American. I have served my people as chairman, councilman, consultant, and hold a special position with the council of elders. At the present time, I am chairman of the San Luis Rey River Committee which consists of the five reservations, Rincon, La Jolla, San Pasqual, Pauma, and Pala.

In my early days, I remember the open ditch lines, the canals with water, from the watershed of the tributaries to irrigate the farmlands. We had orchards, meadows, apricots, pears, apples, walnuts, olives, corn, grain, and gardens. The river provided natural foods and fishing. There were cattle, sheep, horses and an abundance of wild animals.

The limited BIA irrigation systems constructed in 1911 have long deteriorated and gone to pot. We have never been able to get any help since then, although we have done some limited improvements along that line. Due to this cause, the rapid decline of agriculture and land use was caused by: No. 1, the transportation of water out of our watershed; No. 2, in the past 3 years, the rapid growth of surrounding communities; No. 3, the hundreds of wells drilled in the off-reservation nearby areas; No. 4, further aggravation was caused by the continuous negative responses and attitudes from the various agencies of the tribes pleading efforts to maintain a decent standard of living; No. 5, the diversion dam and canal transporting water outside the reservation areas—this was located in my reservation, the La Jolla Reservation—and, No. 6, continuous holding of water in Lake Henshaw Dam

destroys the fishing along the San Luis Rey River and is detrimental to the recreation and campground activity.

However, under such continuous adverse conditions, the tribes still maintain a highly cooperative spirit and attitude toward attainment of self-sufficiency by development of resources and thereby obtaining the needed development of our reservation. This, again, is evidenced by the many council meetings that we have had with all principals involved, attorneys from the Department of Interior and various others.

The tribe poses that we should get a settlement of some sort that would do for our economic development. We would increase employment, road development, development of the water systems, campground potential, further development of that, fill up our new store, fisheries, build buildings for tribal administration, provide a building for our social affairs, agricultural development, and housing.

We realize that the social growth and education would grow parallel with economic growth. In the past century since the creation of the reservation, the tribe has struggled under the most adverse conditions to maintain a dignified existence. Finally, litigation seemed the only recourse and for the past 10 years of slow court proceedings, the tribe is still trying to settle our differences in a reasonable way.

The tribe has constantly maintained a highly cooperative spirit in discussions and an effort to negotiate a settlement equitable to all principals concerned. We would like to see an equitable settlement now, so that we may rely on these benefits for overall growth and general welfare. All benefits realized from the litigation would go for the development of water resources and agricultural lands. We are confident that S. 1507 with some minor modifications will provide an acceptable solution. I ask that you act most favorably on this document as it is developed. Respectively, sir.

Senator MELCHER. Thank you. Mr. Arviso.

STATEMENT OF EDWARD ARVISO, CHAIRMAN, RINCON BAND OF MISSION INDIANS, VALLEY CENTER, CALIF.

Mr ARVISO. Mr. Chairman, my name is Edward T. Arviso. I am tribal chairman of the Rincon and San Lucinda Bank of Mission Indians, located in San Diego County.

The Rincon Indian Reservation was first established by Executive order in 1875. The reservation boundaries now encompass 4,056.81 acres of which 2,748 acres are irrigable. The S. 1507 bill that we are talking about here, the Rincon Indian Reservation believes, is a very important bill that could establish economic growth through agricultural enterprise that will enable the Rincon Indian Reservation to care for its people with social services and educational opportunities. The potential future benefit for the Rincon Indian Reservation is unlimited from a sound economic base which is contingent upon adequate water resources.

The bill itself would insure that the Rincon Indian Reservation could economically get established and get on its feet so we are very interested in supporting this bill and are here today to express that opinion.

At this time I would like to introduce Patricia Duro, who is the head of our planning committee for our reservation. She will talk a little bit about the economic opportunities for our reservation.

Thank you.

Senator MELCHER. Thank you, Mr. Arviso. Patricia Duro?

STATEMENT OF PATRICIA DURO, BUSINESS MANAGER, RINCON BAND OF MISSION INDIANS, VALLEY CENTER, CALIF.

Ms. DURO. Thank you, Mr. Chairman. My short presentation will address the concerns and aspirations of the Rincon Band.

My name is Patricia Duro. I am a member of the Rincon-San Lucinda Band of Mission Indians. I have made my home on the Rincon Reservation for my lifetime. At the present time, I work for the Rincon Tribe as the business manager. However, I feel that being chairman of the Rincon Reservation Planning Committee for the past 4 years enables me to present at this time an overview of the reservation's situation today.

The Rincon Planning Committee is comprised of five tribal members who represents a broad cross section of ideas and interests. Our duties include developing and reviewing on a continuing basis tribal goals and policies; preparing studies, surveys, programs, and plans necessary for the orderly development of the reservation; responsibility for increasing the understanding and the acceptance of planning; coordinating the approved development plans and programs to insure the continuity and conformity to tribal goals and policies; and the protection of the ecological balance of the reservation.

The planning committee also acts as an advisory board to the Rincon Tribal Council in matters of the development of the social, physical, and economic standards for the reservation and its people. As an aid to help the Rincon Reservation plan for its future, the planning commission received a HUD 701 planning grant to prepare a comprehensive plan specifying needs, opportunities, and potentials designed to meet the ultimate objective of maximizing opportunities for the Rincon Indian Reservation. In the past, our reservation has had to act on an ad hoc basis, reacting to Government funding and programs. Through the efforts of our 701 comprehensive plan, we are studying the liabilities that may occur through rapid, unchecked growth and the effects that certain developments may have in our environment, esthetic setting, and culture.

The overall plan is to create a better homeland for our people, to strengthen the reservation economically, to maintain the rural character of the reservation, to improve the living conditions of our members and their families, to expand social, recreational, and educational opportunities for members and their families, to maintain and strengthen Lucinda culture, and to strengthen the reservation politically.

We hope to be self-sufficient through economic development and a contributing asset to this Nation rather than a liability. We are now ready to proceed into the future with the passage of S. 1507 with the proper modifications that are needed. We can't continue to be administrators of Federal programs. Many of these programs are short range and crisis oriented.

We are here today because we need development funds now and believe that through negotiation, rather than litigation, this end can be obtained. The present danger, and I am just expressing a layman's view, of living downstream from an overloaded dam seems to be a threat to the health and safety of our people. I look out my back door every year and watch millions of gallons of water come through the river and erode our property line. We can't even keep up fences. The uncontrolled water causes our range cattle to go down into the Pauma Valley Country Club and it causes a lot of damage.

Our domestic water system, because of the raging rivers in the rainy season, causes the southern side of our reservation to be deprived of domestic water because we can't connect the northern system to the south because of the river.

I feel that with the passage of this bill we can get on and start developing a better homeland for our people. I would like to thank you.

Senator MELCHER. Thank you. Augustine Orosco?

STATEMENT OF AUGUSTINE OROSCO, TRIBAL COUNCIL, SAN PASQUAL BAND OF MISSION INDIANS, FOUNTAIN VALLEY, CALIF.

Mr. OROSCO. Mr. Chairman, my name is Augustine E. Orosco, Jr. I am a member of the San Pasqual Band of Mission Indians. I am the band's delegate to the San Luis Rey River Indian Water Authority. I am also the vice spokesman for the band. The band's counsel, Arthur J. Gajarsa, is also here with me.

I am very honored to be testifying on behalf of the San Pasqual Band. I would like to present to the committee our band's position in support of settlement of the numerous lawsuits in which my band is presently participating. S. 1507, introduced by Senator Cranston, is the first step toward a proposed settlement. We know that the proposed legislation is to be amended to satisfy all parties to the litigation; however, we all acknowledge that a settlement is in the best interest of all. It would eventually make the San Pasqual Reservation self-sufficient and would, in the long run, benefit the general public as well. We could avoid extensive reliance on the Federal Government in the future.

I believe some background information is necessary for the committee to properly understand our position in this matter. The San Pasqual Reservation was patented on July 1, 1910, pursuant to the authority of the Mission Indian Relief Act of 1891. The reservation was supplemented with additional land by Executive order of April 15, 1911.

The present reservation consists of approximately 1,400 acres of five noncontiguous parcels. The land is held in trust for the benefit of the San Pasqual Band. The five parcels are separate, irregular-shaped tracts of land on the hillsides of Valley Center in northern San Diego County, in the middle of the flourishing community of Valley Center. At present, the community of Valley Center is one of the largest producers of citrus, avocado, and kiwi fruits in the country. Our reservation could also flourish if we had water for irrigation and funds for development purposes. Approximately 980 acres of the reservation are irrigable and could be made productive.

We organized under the Indian Reorganization Act. We have adopted a constitution and bylaws. These were approved by the Bureau of Indian Affairs on January 14, 1971. The San Pasqual government is composed of a general council, which consists of all members 19 years of age or older, and a five member business committee, spokesman, vice spokesman, secretary/treasurer, and two members at large.

There are approximately 199 enrolled members of the band. There are 60 to 100 persons eligible to be enrolled. In 1970, the Census Bureau recorded the population at the San Pasqual Reservation as 19. The current population is 242. The influx of people that we have experienced continues to increase. Several factors have contributed to this phenomenon: the unavailability of affordable housing in the outside community; land and homesites becoming available on the reservation; and the recent increase in employment opportunities on the reservation. Moreover, there has been a new appeal of the rural environment available on the reservation and the positive reinforcement of traditional Indian lifestyles.

The population boom that San Pasqual has experienced in this decade has created a tremendous need for services, facilities, and viable economic development projects on the reservation. We need additional revenue to provide services and employment on the reservation. In order to continue this development, we need water and funds.

For instance, until recently, the people on the San Pasqual Reservation have had to haul water on the back of their pickups and cars for domestic use. On Christmas Eve 1978, a domestic water system became operable. It was built after a 5-year struggle with the Indian Health Service and the Bureau of Indian Affairs. Some members of San Pasqual could enjoy the luxury of running water for the first time in 1978.

Now the reservation has outgrown the capacity of the system. The Indian Health Service did not project the substantial growth of the population on the reservation. We now have a water system that is incapable of meeting domestic water needs and no agricultural water. There is no way the Indian people can develop their land without water.

For the past 70 years, the water that supplies Escondido and Vista passed through the eastern section of our reservation. We are not allowed to touch that water. On the west side of the reservation we are fortunate in that the local water district placed a main waterline on a portion of the reservation, but the high cost of imported Colorado River water makes it every impractical for us to develop any area.

At the present time there are a few large individual gardens, some fruit trees, and one small avocado grove on the reservation. The band has started a small Christmas tree grove with financial assistance from HUD. However, because of the limited collateral available, it is impossible for individuals to secure funds for development. That is why the Indian farmer is vanishing. Will we continue to be dependent upon the Federal Government for basic services needed for survival and any kind of development?

Although we feel confident that the lawsuits will eventually be decided in our favor, it will take many more years for them to be fruitful. For instance, docket 80–A was started in 1951 and we have not had a hearing on the merits. The water cases started in 1968–69 have not been resolved. We need to achieve a fair and equitable settlement

of this matter. I would suggest that S. 1507 could be used as the vehicle for settlement. We need to amend it to reflect the changed positions of the parties. Once amended, we would support its enactment.

Mr. Chairman, we would like to request also that you keep the record open so that we can submit additional testimony and evidence for our claim and our proposal for settlement.

[Material not received at time of printing.]

Mr. Orosco. I would be most pleased to answer any questions you may have. Thank you for the opportunity to appear before this committee.

Senator Melcher. Mr. Devers.

STATEMENT OF CLAUDE DEVERS, BUSINESS MANAGER, PAUMA BAND OF MISSION INDIANS, PAUMA VALLEY, CALIF.

Mr. Devers. Mr. Chairman, my name is Claude Devers and I am the business manager for the Pauma Band of Mission Indians on the Pauma Indian Reservation. It is located in the northern part of San Diego County, Calif. At this time, I would like to apologize that the chairman of the band is not here. He has some very pressing concerns involving the reservation's litigation and he asked me to represent the band here.

I do not have a written statement to be submitted at this time; however, the Pauma Indians will submit written testimony at a later date, with your approval.

[Material not received at time of printing.]

Senator Melcher. We will be glad to have that when it is submitted.

Mr. Devers. Yes, sir. We will get it in as soon as we can.

The Pauma Reservation was established in 1891 and includes three separate parcels of land totaling 250 acres. Two parcels totaling 25 acres are approximately 5 miles east and south of the main tract. The main tract contains 225 acres and is located in Pauma Valley in the north county of San Diego which is one of the finest citrus and avocado areas in southern California. On December 6, 1973, the Secretary of the Interior instructed the Bureau of Land Management to issue a trust patent for the Pauma Band for 5,627 acres which is the east portion of the property identified as the Mission Reserve located in the Palo Alto Mountain Range. The total acreage of the Pauma Reservation is now 5,877.25 acres.

The band operates under Articles of Association approved by the Bureau of Indian Affairs on June 28, 1976. The governing body is the general council. The tribal council consists of a chairperson, vice chairperson, secretary and treasurer, and one council member who has special administrative duties and powers to carry out the day-to-day affairs of the band.

The enrollment of the Pauma Band is 85 with pending enrollment of 44 for a total of 129. Residents on the Pauma Reservation include enrolled members, 59; nonmembers, 23 for a total of 82 who live on the reservation.

The housing units are comprised of 15 permanent homes and 11 mobile homes.

Before the reservation was established in 1891, the ancestors of the

Pauma Indians were using all the waters of Pauma Creek, a major San Luis Rey contributor. They irrigated substantial acreage of such crops as apricots, peaches, olives, berries, vineyards, and gardens. The Indians developed, maintained, and improved their own irrigation system. When the reservation was established in 1891, the Government entered into an agreement which limited the Indians' rights to only a small portion of the water of Pauma Creek.

The neighboring non-Indians actually began to enforce this agreement around 1915 when the Indian irrigation was restricted. Lack of funds and additional water further restricted the development of the reservation. In addition, the Indians have had difficulty obtaining sufficient domestic water which further restricted the irrigation. The Indians have made efforts to join local water companies surrounding the reservation and were not successful. The band used Pauma Creek for domestic and irrigation and as a result of the lack of water, the Pauma Indian Reservation is today still undeveloped.

Pauma's present efforts are: without much funds or water, to guarantee her people a future by now replacing an old irrigation pipeline from the upper portions of the Pauma Creek, by hand, in extensive rocky and sandy soil to provide irrigation water to the reservation; by planting a 10-acre tract of jojoba plantation, with the assistance of the University of California at Riverside—this plantation is in its fourth year and is growing in commercial value; and by purchasing a 2,000-gallon water truck with EDA drought relief funds, to transport water to areas of the reservation that are presently without irrigation water.

They also set aside 20 acres of tribal land for the development of avocado or citrus projects, and are providing a tribal complex, with the assistance of EDA local public works program, to allow for communal gatherings and centralization of tribal businesses. They have made attempts to study and reorganize Pauma's tribal government to meet the anticipated social and economic needs of the people, allocate new homes on their tribal lands, serve when new resources are available, all in conjunction with Pauma's economic development plan.

The passing of S. 1507 would mean to the Pauma tribal government that a possible settlement out of court would avoid a prolonged court action that may last for the next 10 to 20 years. This would pose an adverse condition on the tribal government. Pauma needs assistance now. A settlement out of court would speed up the process that would enable Pauma to realize in a shorter period of time (1) its plans for self-sufficiency which means less dependency on Federal support; (2) the strengthening of the tribal government to manage its own tribal affairs and to implement its own programs for the youth, elders, social, jobs, health, and reservation facilities; (3) the development of Pauma's irrigable lands—approximately 243 acres—into agricultural projects that would generate additional funds to supplement tribal operations; and (4) the development of a complete irrigation for the reservation which is very badly needed.

Pauma is one of the five bands involved with this litigation and is agreeable to any compromise.

Thank you.

Senator MELCHER. Thank you very much, Mr. Devers. Now, Lawrence Blacktooth?

STATEMENT OF LAWRENCE BLACKTOOTH, PALA BAND OF MISSION INDIANS, PALA, CALIF.

Mr. BLACKTOOTH. Mr. Chairman, my name is Lawrence Blacktooth, formerly tribal chairman of the Pala Band of Mission Indians, and current band representative to the San Luis Rey River Water Authority.

The Pala Band of Mission Indians occupies the Pala Reservation which is located in north San Diego County along highway 76, 6 miles east of Interstate 15, and approximately 50 miles northeast of the city of San Diego.

Currently, the total membership of the Pala Band is 502. Although many of the band members live off the reservation, the total population which lives on the reservation, including resident band members, plus other residents who are non-Indians or Indians not members of the Pala Band, is approximately 525.

The present Pala Band is composed of descendants of the Cupeno and Luiseno peoples, the Cupeno descendants being more numerous. The location of the present village of Pala was the location of a Luiseno village occupied continuously from pre-European contact to the present. The Cupenos originally lived in the San Jose Valley in an area currently known as Warner Springs Ranch. The Cupenos had occupied the area of Warner Springs some 300 to 400 years prior to European contact.

In 1840, the land of the Cupenos was given to Pio Pico by the Mexican Government. In 1842, he apparently was chased off by the Indians, and in 1844 the property was given in another grant to Juan Jose Warner, a naturalized Mexican citizen.

Warner Springs Ranch was included within the territory gained by the U.S. conquest of Mexico in 1848. In the Treaty of Guadalupe Hidalgo with Mexico in that same year, the United States agreed to honor title or right to property recognized by the Mexican Government. The United States then enacted the Land Claims Act of 1851 which required that all preexisting claims to land in California be presented to a Board of Land Commissioners within 2 years, in order to prevent the land from reverting to the public domain. There was never any evidence that the Cupenos were even aware of the requirement that they understood English or even Spanish.

The Cupenos, unaware of the requirement, failed to file any claims to the property. In 1893, Warner's successor-in-interest filed a quiet title action in the San Diego Superior Court, and sought to eject Cupenos from their historical land. The Cupenos were prohibited from submitting evidence of their historical occupancy because of their failure to file a claim in 1851. This decision went to the California Supreme Court where it was affirmed, notwithstanding a prior California Supreme Court case in 1888, on virtually identical facts, which held that Indians in such a situation were not required to present claims under the 1851 act. The decision was then eventually affirmed by the U.S. Supreme Court in *Barker* v. *Harvey*, 1909, 181 U.S. 963. This was the same Supreme Court that gave us the decision of *Plessy* v. *Ferguson*, the forerunner of the "separate but equal" laws.

The original Pala Reservation was created by Executive order at its present location in 1875 for the Luisenos living there. By 1893, the

reservation consisted of 160 acres. Following the U.S. Supreme Court decision in *Barker* v. *Harvey*, Congress purchased approximately 3,400 acres adjacent to the then existing small reservation at Pala. Several subsequent additional withdrawals from the public domain were made, adding land to the reservation between 1903 and 1973, and in 1973 a 6-square-mile portion of the Mission Indian Reserve was added to the Pala Reservation, extending the reservation boundaries to the east.

Pala was selected for the relocation of the Cupenos from Warner's Ranch based on representations that adequate water existed for the Cupeno's agricultural needs, and that permanent housing and agricultural supplies, tools, and equipment would be provided so that the Cupenos could follow their traditional way of life.

Between 1850 and 1900 at Warner's Ranch, the Cupenos sold milk, fodder, and some crafts to whites. The women took in laundry and washed it at the hot springs. Many maintained gardens and orchards: apples, apricots, pears, and peaches. The men were involved in woodcarving and saddlemat manufacturing, while women made lace. Cattle were raised, and over 200 acres of land were under cultivation. The people were happy, prosperous, and the adobe houses that constituted their village are currently used as guesthouses by the resort located at Warner Springs.

In 1903, based on the *Barker* v. *Harvey* decision, the U.S. Army forcibly removed the Cupenos from Warner's Ranch to Pala. At Pala, people attempted to farm, but water was a problem. None of the permanent housing or equipment promised was ever provided the Cupenos.

In 1914, the U.S. Government entered into the first of three contracts with the predecessors of Vista Irrigation District and the City of Escondido to divert what water that did reach Pala from the San Luis Rey Channel into the areas of Vista and Escondido for use by non-Indians. In 1924, the Escondido Water Co. built the diversion dam. Thereafter, the surface flow in the San Luis Rey River gradually disappeared and, in the process, largely eliminated agriculture on the reservation. This caused numerous Pala Indians to leave the reservation and further lowered the standard of living for those who remained on the reservation.

The current economic picture for band members on the reservation is not promising. In excess of 40 percent of the labor force on the Pala Reservation is unemployed. If the unemployed persons and those employed earning less than $5,000 per year are combined, the net figure exceeds 75 percent of the work force. Little opportunity currently exists for Pala residents to remain on the reservation and obtain employment from which they can earn a living wage. The majority of those jobs that do exist on the reservation are supplied through various federally funded programs, and have no long-term prospects. There are a total of 150 housing units on the reservation, of which approximately 20 percent are substandard.

Some time ago it became apparent to members of the Pala Band that the only way to avoid termination of the band and its culture is to attempt to develop an economic base on the reservation which could be used to fund additional development and provide a source of employment and income for reservation residents.

The band has and does engage in other commercial activities. In 1961, a 50-year lease of approximately 1,300 acres of tribal land was made for sand and gravel operations. Although some 300 to 400 acres of the original lease area have been removed, the lease still provides Pala some $50,000 to $60,000 annually in royalties. It was originally hoped that this lease would provide both employment and income for the band. Unfortunately, only one or two Pala Band members have been employed at the operation.

The All Mission Indian Housing Authority, of which Pala is a member, is a federally funded Indian chartered corporation which constructs HUD housing on its member reservations. Since 1971, 40 HUD houses have been constructed on the Pala Reservation for band members.

In 1971, the band initiated construction of the campground using band funds only. A cultural center was started which was completed in 1974, and a boys' club was organized. In 1972, a cable TV system was begun, new water and sewage system improvements were installed, and garbage pickup was started.

In 1976, the Pala Band negotiated and entered into an industrial lease with a cement-tile manufacturer for the lease of approximately 5 acres on the reservation as a site for the construction and operation of a tile manufacturing facility. The company has apparently prospered on the reservation, the band has been provided an excellent return on the leased land, and some employment has been provided resident band members.

A second project embarked upon by the band in 1976 was an alfalfa project wherein the band leased approximately 90 acres of allotted lands for a 2-year project. This was an experimental project conceived as both a means to provide revenue for additional development and to provide jobs for reservation members. The band is currently examining the possibility of continuing the project with long-term leases from the allottees. However, a major difficulty experienced in the operation of the project was the periodic shortage of water, which is a problem that has plagued, and continues to plague, attempts by the Pala Band to attempt to develop their agricultural resources.

Another project the band has been working on for some time has been an expansion and major improvement of the campground facility. The existing facility is inadequate in that a recreational lake is sorely needed to attract the number of campers necessary to make the project financially successful. Again, as with most problems facing Pala, the project is foundering due to lack of money. It is estimated that some $500,000 would be necessary to create the size lake necessary for year-round fishing and canoeing. Once developed, this project would be both financially lucrative and one capable of employment of from 5 to 10 Pala residents.

The project most promising for Pala and her people is the avocado project. Based on numerous planning studies, the band has concluded that agriculture presents the best potential for economic development for the reservation and of the possible crops, it appears that avocados are the most promising area on which to focus. Once the avocado project is underway, the band hopes to branch out into other types of agriculture such as truck farming in the lower valley areas, the jojoba in the more arid, less fertile regions, and even cattle raising in those

regions that could be reclaimed for grazing. All this must wait, however, until the avocado project is in production.

Due to the cost involved, the process of developing a 100-acre avocado grove will be done in phases. The band has obtained approximately $229,000 from EDA through the local public works program, which funds are earmarked for construction of an irrigation line. However, water availability has been a problem and the band has been forced to locate a well for the project some 7,000 feet away from the project. This has taken additional time and has greatly increased the estimated cost for the project.

The land for the project has been cleared and a system of access roads has been constructed by numerous Pala members employed on a CETA grant. Work remaining to be done on the first phase includes installation of the irrigation systems, excavation and lining of the reservoir, and hookup of the telemetery system. Phase 2 consists of the secondary irrigation system and tree planting.

At present, the project is being held back due to lack of development capital. If the band's capital needs can be met, water can be provided to the grove and the potential for the band is unlimited. The reservation enjoys a nearly ideal climate and excellent soil conditions, topography, and drainage for the successful raising of avocados. It also enjoys certain tax benefits over its competing non-Indian growers which would make it extremely difficult for them to compete with the reservation. If, and when, this grove reaches production, the band believes that it will have the means to turn its reservation into a garden and will be assured of funds for the development of additional groves and other agricultural activities, and will be able to guarantee the employment of band residents for many years to come.

In 1903, my greatgrandfather, Cecilio Blacktooth, then chief of Cupa, made the following statement to the Government commissioners at Warner Hot Springs:

> We thank you for coming here to talk to us in a way we can understand. It is the first time anyone has done so. You ask us to think what place we like next best to this place where we always lived. You see the graveyard out there? There are our fathers and our grandfathers. You see that eagle-nest mountain and that rabbit-hole mountain? When God made them, he gave us this place. We have always been here. We do not care for any other place. We have always lived here. We would rather die here. Our fathers did. We cannot leave them. Our children were born here. How can we go away? If you give us the best place in the world, it is not as good for us as this. This is our home. We cannot live anywhere else. We were born here and our fathers are buried here. We want this place and not any other.
>
> There is no other place for us. We do not want you to buy any other place. If you will not buy this place, we will go into the mountains like quail, and die there, the old people, the women and children. Let the Government be glad and proud. It can kill us. We do not fight. We do what it says. If we cannot live here, we want to go into the mountains and die. We do not want any other home.

The potential at Pala and for the Cupa people is greater now than at any time since our homes and land at Warner's Ranch were taken from us. We at Pala see this proposed legislation as a means of providing us with the wherewithal to achieve economic independence, and thereby redress the injustices that have been our lot for the last 90 years. Thank you very much.

Senator MELCHER. Thank you very much, Lawrence Blacktooth. Three attorneys are present. I assume that you have some written statements to submit for the record.

Mr. PELCYGER. We would like to submit them, yes. Not today, but in a week or so.

[The statement follows. Testimony resumes on p. 48.]

STATEMENT OF ROBERT S. PELCYGER, ARTHUR J. GAJARSA, DOUGLAS W. BECK, ATTORNEYS FOR LA JOLLA, RINCON, SAN PASQUAL, PAUMA AND PALA BANDS OF MISSION INDIANS

We would like to explain how we got where we are and why it is incumbent on the United States to provide a fair and just settlement of this controversy.

When most Indian reservations were established, neither the United States nor the Indians paused specifically to address the waters without which the reservations would be valueless. Nevertheless, the Supreme Court has held that the reservation and protection of the reservations' water resources was a critically important, albeit implicit, part of the process by which the reservations were created.

The reservations on the San Luis Rey River with which we are here concerned are different in this respect. The record clearly shows not only that the reservations were selected owing to the availability of water, but that the Indians were effectively cultivating their lands and utilizing those waters for a long time prior to the formal establishment of the reservations pursuant to the 1891 Mission Indian Relief Act. It also shows when the Mission Indian Relief Act was under consideration, Congress knew of the intense competition for Southern California's scarce water resources and that the Indians were systematically being deprived of their few remaining lands and waters.

Indeed Congress' attention was specifically directed to an 1890 attempt by white trespassers to divert the waters of the San Luis Rey River. The Senate responded by passing a resolution directing the Secretary of the Interior to inform the Senate of all the circumstances pertaining "to the occupation of any portion of the La Jolla Reserve of the Mission Agency in California by persons not Indians for ditches and flumes." The Senate Resolution specifically inquired: "By what authority and under what rights such occupation, if any, is maintained and what steps, if any, have been taken by the Department to protect the Indians in their rights."

The principal impetus for the Mission Indian Relief Act was an 1883 report by Helen Hunt Jackson which described the deplorable and egregious conditions under which Southern California's Indian population was living. These conditions were summarized in Senate Report No. 74 (1888):

"The history of the Mission Indians for a century may be written in four words: conversion, civilization, neglect, outrage. The conversion and civilization were the work of the mission fathers previous to our acquisition of California; the neglect and outrage have been mainly our own. Justice and humanity alike demand the immediate action of government to preserve for their occupation the fragments of land not already taken from them."

The same report also stated:

"Much of the land [on which the Indians are living] is valueless without irrigation, and the Indians are being deprived of their water rights wherever and whenever the interests of the whites demand the appropriation of such rights."

Under the Act, a three member Commission called the Smiley Commission was appointed to select a reservation for each band or village of Mission Indians in Southern California. Trust patents were to be issued for the lands so selected. The reservations' water rights were specifically protected by section 8 of the Act which authorized the Secretary of the Interior to grant rights of way for ditches and canals across the reservations prior to the issuance of trust patents, but only on condition that the Indians be supplied with sufficient water for irrigating and domestic purposes. Once a trust patent was issued, rights of way for ditches or canals could be obtained only by a contract with the Indians which was subject to the Secretary's approval and conditions.

Mr. Chairman, if this specific and farsighted congressional plan had been followed, the waters of the San Luis Rey River would have been the cornerstone for economically sound and self-sustaining Indian communities as Congress had intended, and we would not be here today. Instead, the La Jolla, Rincon, San Pasqual, Pauma and Pala Bands are here, just as they have been before courts and administrative agencies for the past 10 years, seeking to utilize and control the water which has been illegally diverted away from the reservations and out

of the San Luis Rey River watershed—so that their reservations once again can be made to bloom just like the adjacent non-Indian lands.

The list of what went wrong—the omissions, commissions, flagrant statutory violations, and so on— is virtually endless. The record of this controversy is a classic case study of bureaucratic neglect, mismanagement of essential resources and breach upon breach upon breach of solemn, trust obligations.

The Mission Indian Relief Act was passed in 1891 and the Smiley Commission selected the reservations the same year. Patents were issued for La Jolla and Rincon in 1892. The Indians were using virtually all of the surface waters available on the reservations for irrigation and were self-supporting and independent. Then, everything went wrong because the congressional plan was not followed.

1. It began in 1894 with a contract that was allegedly entered into by the chiefs and headmen of the La Jolla Band for a canal right of way across the La Jolla Reservation for diversion of water from the San Luis Rey out of the watershed to Escondido. The contract was approved by the Interior Department. We know that one of the four "chiefs" who signed the agreement was not an Indian. There was no consideration for the La Jolla Band. The agreement purported to affect the water rights of the Rincon Band, but the Rincon Band was not a party. The canal also crossed the Rincon and San Pasqual Reservations, but the right of way itself was limited to La Jolla. The 86 year pattern was established—The Indian lands would be used to deprive the Indians of their essential water rights.

2. In 1897 the Rincon Indians entered into a contract that permitted the canal to cross their reservation in return for being supplied with water. The Secretary did not approve the agreement, however, because of the Indians' complete dependence on the San Luis Rey River for their water "and in view of the difficulty experienced in dealing with whites obtaining a foothold on a reservation, however strong the agreement is drawn for the Indians' protection * * *." The canal was already in place but nothing was done.

3. Eleven years later—in 1908, the Secretary granted a permit for a canal right of way through all three reservations and other government owned land. Neither the Indians nor the government received any consideration whatsoever. The Indians were not consulted. The requirements of Section 8 were not fulfilled. The right of way was granted because the canal "has been constructed and in use for several years." Nothing was done about the unauthorized use of tribal lands for the fourteen years from 1894 through 1908.

4. The district court has held that the 1894 agreement is void as to Rincon and that the 1908 permit is void as to all three reservations for failure to comply with Section 8 of the Mission Indian Relief Act.

5. The Rincon Indians complained about not getting the water to which they were entitled from the San Luis Rey because it was being diverted to Escondido. Nothing was done. Instead, the original mistake was compounded over and over again.

6. In 1914, the Secretary entered into a contract with Escondido that gave Escondido tribal land for a power plant and may have limited the Indians' water rights to 6 cubic feet per second. Since 1914, the Rincon Indians were in fact limited to the maximum of 6 cubic feet per second even though they were and are entitled to much more under the Winters doctrine, and the government did nothing until 1969. The contract was negotiated and executed after the Supreme Court's decision in the *Winters* case and after the Ninth Circuit Court of Appeals had held in the *Conrad Investment Co.* case that the Indians had a prior right to enough water for all of the irrigable lands. The district court has held that the 1914 contract is void insofar as it limits or conveys Indian property rights.

7. In 1922, the Secretary entered into a contract on behalf of the Rincon and Pala Indians that limited their water rights to 6 cubic feet per second, allowed Henshaw Dam to be built on the headwaters of the San Luis Rey River and allowed the waters impounded in Henshaw to be diverted out of the watershed. Water and property rights worth many millions of dollars and specifically protected by Section 8 of MIRA were simply given away. This contract has also been held void insofar as it limits or conveys the Indians' water rights.

8. In 1922 Escondido and Vista entered into a contract that provided for the rerouting and expansion of the canal and for Vista's joint use of the canal and of the Indian lands. There was no consent by the Indians or Interior although Interior probably knew what was happening. Interior did nothing.

9. In 1924 the Federal Power Commission granted a license for the Escondido Project—No. 176. The Indians were not consulted—a clear violation of Section

8 of the Mission Indian Relief Act. No new conditions were imposed. The Indians received no annual charges—a clear violation of Section 10(e) of the Federal Power Act. In its recent decision, FERC held that the license interfered with the purposes for which the reservations were established in violation of Section 4(e) of the Federal Power Act.

10. The canal was rerouted and enlarged in 1928 without anyone's consent in violation of the Federal Power Act and the Mission Indian Relief Act. The Indians weren't consulted until 1985 and then they said "no." But Interior and the FPC said "yes." The United States now acknowledges that the Indians were right and the United States was wrong.

11. The Rincon Indians never got even the amount of water they were promised in the 1914 contract. By the water company's own accounting, Rincon was entitled to an average of about 2,500 acre feet per year—they were shortchanged about 1,000 acre feet from 1924 to 1970. Nothing was done about this until 1990.

12. In the 1920's, right after the completion of Henshaw Dam, the Interior Department realized that the contracts were not good for the Indians and that something should be done so that the Indians would gain some advantage from Henshaw storage. Nothing was done until 1990.

13. The 1922 contract, bad as it was, was never enforced. The Rincon Indians were shortchanged again because the inflow into Henshaw was not determined as required by the contract, and Pala suffered because the government never called on Henshaw or Vista to fulfill its obligations until after 1970.

14. Henshaw water was conveyed through the Escondido canal from 1924 to the present. FERC has held that this was in violation of the license for Project No. 176.

15. In 1950 the water companies began to pump water from above Henshaw Dam and to convey that water through the Escondido canal. This has continued for 30 years. It was an acknowledged breach of Rincon's water rights. FERC held that this also violated the license for Project No. 176.

16. In 1962, the BIA wrote to the Rincon Band acknowledging that the reservations' water resources had become inadequate due to non-Indians' diversions and pumping and that a "serious water shortage exists in that area." The solution proposed was to bring imported water to the reservation. Again, nothing was done.

17. Finally, in 1968, in defending the Indians' claims for damages against the United States, the government claimed that the Indians' suit was premature because the Indians' water rights had not been adjudicated. In defending against the Indians, the government also advocated an interpretation of the contracts under which the Indians would be entitled to storage in Lake Henshaw. No such demand had even been made before. No such demand was made even after the filing of the government's brief against the Indians. For several more years, the government refused to file suit to determine the Indians' rights against Escondido and Vista.

The settlement concept embodied in S. 1507 is purely voluntary; nothing is imposed on anyone. It is possible to achieve because Escondido and Vista have alternate sources of water on which they are currently relying for a large portion of their needs. S. 1507 should be enacted even if Escondido refuses to negotiate because the Indian Bands may soon obtain control of the canal from Escondido through the FERC proceeding but would still have to enter into an agreement with Vista dividing the flows of the San Luis Rey River above Henshaw Dam and defining their respective storage rights in Lake Henshaw.

The United States must bear major responsibility for the mess in which the Indian Bands, Escondido and Vista now find themselves. Only the United States Congress can resolve the situation in a manner that is truly fair and equitable to all concerned. We have here an 86 year old disaster that cries out for resolution. No one forum has jurisdiction over the entire controversy; yet all parts of the problem are interrelated. Because the problem is so multifaceted and involves so many aspects including water rights, complex contracts, rights of way, theories of damages, FPC licenses and annual charges, the ultimate resolution of the litigation can reasonably be expected to consume another 15 to 20 years. Congressional action is the only realistic and practical alternative.

Senator MELCHER. The hearing record will remain open for 10 days. Anyone wishing to submit written statements may do so during that 10 days.

It is my understanding from all the bands that have testified that you are all in agreement that you want a bill such as S. 1507 to be enacted. Is that correct?

Several of you have mentioned that you would have need of amendments. On that point, each of you who testified on behalf of your band, who thinks that there should be some specific amendments, we would like to have something more definite than just your general statement today identifying what amendments you are talking about and what you agree to. Is that all right? Can you do that within 10 days?

Mr. PELCYGER. Yes; we can submit proposed amendments basically along the lines that Senator Cranston outlined in his testimony.[1]

Senator MELCHER. It would be very helpful to us. I would suspect those amendment will indicate the amount or amounts of money involved in economic development, for instance. Don't be vague about that because we are going to try and arrive at an agreement on the amount of money that is involved which is very crucial. We have Senator Cranston's testimony indicating that it will be somewhat less than what he had first anticipated, but he does not identify how much less. Each of the bands has testified that they expect some economic development funds to be made available as part of the settlement. We need to know from each of the bands what they are talking about. We don't want to draft a bill and then find it falling apart, not just Escondido dropping off it, but the bands dropping off of it too. It seems realistic to believe that unless Escondido is part of this settlement, we don't have much of a settlement going. Escondido should be part of the overall agreement before we can have a settlement.

Did you want to say something on that, Mr. Pelcyger?

Mr. PELCYGER. Yes, Mr. Chairman. May I address a couple of questions that came up in the course of the hearing today? I will keep my remarks very brief.

Senator MELCHER. Certainly.

STATEMENT OF ROBERT S. PELCYGER, ATTORNEY FOR LA JOLLA, RINCON, SAN PASQUAL, PAUMA, AND PALA BANDS OF MISSION INDIANS

Mr. PELCYGER. First, the bill in concept is completely voluntary in nature. In other words, the bill, S. 1507, does not impose settlement on anyone. S. 1507 really provides a vehicle and authorization for settlement to be carried out and the device through which it would be carried out are consensual, contractual arrangement. My feeling is that the committee should proceed, and it should proceed with S. 1507, as amended, in the manner that Senator Cranston has suggested. It is my feeling also that ultimately all the bodies will recognize that the only real way to obtain a fair and equitable settlement is through that mechanism.

This is a situation, Mr. Chairman, as will be detailed in a written submission, which has been an 86-year disaster. Unlike other situations perhaps in other parts of the country, this is not one where the United States simply stood passively by and watched while this situation

[1] Material not received at time of printing.

developed. Rather, the United States was an active participant from the beginning. Unlike other situations, this is not a situation where the responsibility of the United States to protect the water and property rights of the Indian reservations involved is in any way in doubt. The United States has a very specific responsibility that was defined by the Congress of the United States in section 8 of the Mission Indian Relief Act to prevent exactly the sort of situation that developed here. Indeed, when Congress in 1890 was considering the Mission Indian Relief Act, this precise situation was brought to the attention of the Congress, that is, utilizing Indian lands to divert the Indians' water supply and Congress' response to that issue was to enact section 8 of the Mission Indian Relief Act. If that section had been complied with, we wouldn't be in the situation which we are in today.

So, the United States was really gutless here and it is my firm belief that only Congress can get us out of this situation in a way that is fair and equitable to all concerned.

The present situation, I think, is, as you have heard and has been detailed on the record, is intolerable. We have this major problem with regard to Henshaw Dam. In the last 3 years alone, more than $10 million worth of water was released from that reservoir and wasted to the ocean because of the unsatisfactory and unsafe condition of the dam. Only through this settlement can that situation be rectified.

Fortunately, nobody need go without water. There is enough water in the area. There are alternate sources of water. No one need go dry. So, the elements are there and I believe that if the committee acts favorably, the parties will ultimately, through the contractual arrangements authorized by the bill, be able to reach an agreement.

Senator MELCHER. I just want to clarify one part. We are supposed to represent this bill as a settlement. Contrary to what may be the general impression, it is not all that easy to pass bills. If we are going to represent it to the Senate as a settlement, we must have all the pieces and agreements in order.

Mr. PELCYGER. I understand what you are saying, Mr. Chairman. I would like to be able to tell you that all the pieces are in order. They are not, but the other aspect of it is that the bands and Vista have reached a general agreement and it is possible through the litigation, if Escondido is not willing to cooperate and not willing to negotiate, to attempt to speed up the litigation in a way that will resolve the existing problems with Escondido. We would still need Escondido's consent or a bill like that to deal with the Vista problem because of the problems posed by Henshaw Dam and, ultimately, some kind of contractual arrangement between the bands and Vista will be necessary in any event even if Escondido stays out.

Senator MELCHER. Well, Vista testified, if I understood him correctly, that without Escondido being in agreement, Vista is not in agreement with the bands. I don't think I misrepresent you, do I, Mr. Wright? Is that not true?

Mr. WRIGHT. Yes, sir.

Senator MELCHER. So, I do not understand how we are supposed to pass S. 1507 to arrive at an agreement with Vista without Escondido being on board.

Mr. PELCYGER. What I am saying, Mr. Chairman, is that the problems that would prevent Vista from settling with the bands in the

current situation could be resolved through the litigation if the bands are successful against Escondido which I believe they will be. At that point I think the obstacles to Vista's having a separate arrangement with the bands, once that part of the litigation is completed, would be removed.

Senator MELCHER. Are you telling us to wait until you are successful with Escondido?

Mr. PELCYGER. I am saying that we would need a bill in any event, and our position is that the bill should proceed as expeditiously as possible and that it would act itself as an inducement and incentive toward settlement.

Senator MELCHER. We will review that point very carefully and also in close discussion with Senator Cranston. Thank you all very much.

Mr. PELCYGER. Thank you, Senator.

Senator MELCHER. This committee is adjourned.

[Whereupon, at 12:07 p.m., Thursday, March 6, 1980, the committee was adjourned.]

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Chairman, Select Committee on Indian Affairs,
Washington, D.C.

DEAR SENATOR MELCHER: Enclosed is testimony for the March 6, 1980, Senate Select Committee on Indian Affairs hearing on S. 1507, a bill which settles disputed Indian water claims to the San Luis Rey River.

Please feel free to contact me if you have any questions.

Respectfully submitted,

RACHEL A. BLUESTONE,
American Indian Coordinator.

Enclosure.

TESTIMONY ON S. 1507 BY THE STATE OF CALIFORNIA, GOVERNOR'S OFFICE, OFFICE OF AMERICAN INDIAN COORDINATOR

On August 24, 1979, Governor Edmund G. Brown Jr. sent a letter to Senator Alan Cranston supporting passage of S. 1507, legislation which settles litigation over Indian water rights to the San Luis Rey River. In his letter the Governor said, "The State of California supports a just, negotiated resolution to this controversy, as ambodied in S. 1507, thus avoiding prolonged litigation."

S. 1507 would provide for the transfer of present water rights owned by Vista Irrigation District (Vista) and the Escondido Mutual Water Company (Escondido) to the federal government. The legislation also has provisions for the federal government to pay monies to the Indians to settle any pending damage claims. These two provisions would enable the Indian bands to develop barren reservation lands for agriculture and other economic development. The diversion of the San Luis Rey River waters from the reservation lands to irrigate the inland North San Diego County agricultural interests has allowed for the flourishing and prospering of the citrus and avocado industries. However, conspicuously missing from this prosperity has been any corresponding prosperity on Indian lands.

The 31,000 acres encompassed by the five reservations are mostly undeveloped. As a result of little economic and agricultural development on the reservations, unemployment runs at a rate of 46 percent. The median income of the residents is well below the national poverty level. Available social services are inadequate to meet the unique social and cultural needs of the Indian communities. The lack of development on the reservations and the resultant problems can be directly attributed to the fact that the waters of the San Luis Rey River have been diverted. Clearly, the provision of water and capital to the Indian bands would go far in making the reservations viable and economically self-sustaining so that the Indian people will be able to enjoy a standard of living that is comparable to their neighbors. Another important provision of S. 1507 is the assurance that Vista and Escondido would receive adequate water supplies for their domestic, agricultural and recreational uses.

S. 1507 also provides for the purchase and transfer of the 43,000 acre Warner Ranch tract above Lake Henshaw from Vista to the federal government. Such lands can be utilized for open space, recreational and other compatible uses. It is one of the last remaining open space areas of its size in Southern California. Also, the land retains unique historical and archeological significance. The Governor's Office of American Indian Coordinator, State Health and Welfare Agency, State Office of Economic Opportunity and the State Department of Parks and Recreation have expressed an interest in assisting the Indian bands in prepara-

tion of any long-range economic development plans which the bands may wish to consider relating to utilization and development of the 43,000 acres for recreational and other compatible open space purposes. The State agencies are extremely interested in projects that will alleviate the high unemployment. The State would assist the tribes in resource inventories, land use and any feasibility studies when the tribes express an interest in utilizing or developing all or parts of the land around Lake Henshaw.

Finally, S. 1507 would provide funding under which the federal government could repair Henshaw Dam, in consultation with the California Department of Water Resources. Currently, storage in Lake Henshaw is restricted to a maximum of 10,000 acre-feet under California's laws on safety of dams. This is far less than the capacity of the reservoir. The State Department of Water Resources has determined that any greater storage behind the existing dam would constitute a threat to life and property. In 1978 and 1979, the owners of Henshaw Dam were required to release water impounded by the dam in excess of 10,000 acre-feet; water which was impounded as a result of major storms which occurred those years. The owners estimated the total value of the released water to be in excess of $1,500,000. Clearly, repair of the dam either by the federal government under S. 1507, or by the present owners using their own sources of funding, is in the interest of all persons living immediately downstream who would be protected from the rush of floods.

In closing, we respectfully remind the committee that the genesis of and authority for S. 1507 lies in the Winters doctrine of reserved water rights, which states that where the federal government has expressly reserved lands from the public domain for purposes requiring the use of water, sufficient water is impliedly reserved to guarantee the present and future fulfillment of those purposes. In the case at hand, the Mission Indian Relief Act of 1891 was passed by Congress for the purpose of securing permanent homelands for the Mission Indians. Implicit in the passage of the Act was the promise by the federal government to make the reservations productive and to allow the inhabitants the full use and enjoyment of such lands. Incidentally, the United States District Court for the Southern District of California has held that, of the four contracts made by the federal government, the contracts of 1908, 1914 and 1922 are void. Today, the reservations could be thriving communities if those agreements—which were made by the federal government on behalf of the Indians—had adequately protected their reserved rights instead of making the waters of the San Luis Rey River virtually unavailable to the reservations.

CITY OF ESCONDIDO,
Escondido, Calif., February 12, 1980.

Hon. JOHN MELCHER,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR MELCHER: Your letter of January 17, 1980, announced that Senator Cranston's bill, S. 1507, would be considered by the Select Committee on March 6, 1980, and that testimony from the City of Escondido and the Escondido Mutual Water Company would be welcomed at that time.

On February 6, 1980, the City Council of the City of Escondido and the Board of Directors of the Escondido Mutual Water Company met and reviewed the status of the current settlement negotiations in regard to the San Luis Rey River water rights dispute which is the subject of S. 1507. Following these reviews, each body unanimously adopted a motion which indicated that the settlement proposals set forth by the government were unacceptable and stated that, under the circumstances, Escondido was withdrawing from further settlement discussions.

In view of the action taken by the City Council and the Mutual Board, the City of Escondido and Escondido Mutual Water Company can no longer support S. 1507 and, therefore, do not propose to offer any testimony or evidence related to the purposes of that legislation.

We would, however, like to take this opportunity to thank your committee and staff for their efforts on behalf of the City and the Escondido Mutual Water Company.

Very sincerely,

DOUGLAS G. BEST,
Mayor, City of Escondido.
EARLE W. FREY,
President, Escondido Mutual Water Co.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 6, 1980.

Hon. JOHN MELCHER,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 1507, a bill "Relating to the settlement of certain claims and controversies involving the waters of the San Luis Rey River in San Diego County, California, and to other matters."

We strongly oppose the enactment of S. 1507 because a settlement agreement acceptable to all of the parties has yet to be negotiated. We are currently participating in negotiations in an effort to arrive at such an agreement, but such negotiations have not progressed to a point where we can recommend legislative action with respect to them.

In implementing President Carter's water policy message of June 6, 1978, this Department has embarked upon an effort to encourage the resolution of water rights disputes between Indians and non-Indians in the west through negotiation rather than litigation. We are firmly convinced that it is in the national interest to facilitate the prompt and orderly resolution of water rights disputes. At the same time, settlements must be genuine compromises with demonstrable local contributions rather than federal buyouts. We believe that continued negotiations among the parties in this dispute will result in a settlement agreement which reflects these considerations.

S. 1507 would provide for the settlement of a water rights dispute among the City of Escondido, California, the Escondido Mutual Water Company (now partially integrated into the city's water system), the Vista Irrigation District, and five bands of Mission Indians—Rincon, La Jolla, San Pasqual, Pauma, and Pala. At issue is the primary water supply of 100,000 people, the economic development of five Indian reservations, flood control protection for a thirty-mile stretch of the San Luis Rey River, the settlement of three expensive and protracted lawsuits, and resolution of multi-million dollar claims against the United States.

S. 1507 would provide for federal financing of the reconstruction of Henshaw Dam, the purchase of 43,000 acres of land for open space, the purchase of Escondido's water rights, the settlement of the Indian claims, and the development of the five Indian reservations. The bill as introduced would cost the United States approximately $118 million, and would result in the Federal Government assuming responsibility for what are now non-Federal obligations.

In the mid-1870's, certain lands in the San Luis Rey River Basin in northern San Diego County, California, were set aside by executive order as Indian reservations. In 1891, with the passage of the Mission Indian Relief Act, six reservations—La Jolla, Rincon, San Pasqual, Pauma, Yuima (which is now considered part of Pauma), and Pala were made permanent.

In 1889, the residents of the Escondido Valley formed the Escondido Irrigation District, which undertook to divert water out of the San Luis Rey River watershed and transport it by canal to the Escondido Valley. In 1894 and 1908, the Secretary of the Interior executed or approved various documents purporting to grant canal rights-of-way across three of the Indian reservaions. The canal was then constructed. The validity of these documents is now at issue, as is the validity of contracts entered into by the United States on behalf of the Indian bands with the Escondido Mutual Water Company in 1914 and with William Henshaw in 1922.

Three legal proceedings have resulted from the dispute. The proceedings are unusually complex and burdensome, raising many novel questions of law. In an action begun in 1950 before the Indian Claims Commission and transferred in 1976 to the Court of Claims, the Indian bands are seeking damages from the United States for alleged failure to protect their water rights. In a second proceeding, a federal district court has ruled the 1894, 1914, and 1922 contracts void, to the extent they purport to affect the water rights of the bands involved, and a 1908 canal right-of-way permit invalid. The decision is being appealed. The third proceeding, before the Federal Energy Regulatory Commission, resulted in the issuance of a joint license to three of the parties. All parties, including the Indian bands and the United States, seek judicial review of the Commission's decision.

Since July 1979, the parties have negotiated, with the participation of the

Departments of the Interior and Justice, in an effort to devise a legislative proposal which will meet the reasonable needs of all parties at a reasonable cost. The parties had reached general agreement on basic concepts and on some details of a settlement but they had not yet reached complete agreement.

On February 6, 1980, counsel for the City of Escondido and the Escondido Mutual Water Company advised us that "Escondido is withdrawing from the negotiations and will not support the pending legislation." We regard this decision as a temporary setback and are confident that all parties will find a negotiated settlement in their long-term best interests.

The principles of a settlement agreement currently being considered are outlined briefly below. As noted above, negotiations are still underway and several major issues remain unresolved, including the amount of any payments or contributions by the concerned parties including the United States in such an agreement.

Under such a settlement agreement, Escondido would transfer to the United States, as trustee for the five bands, the Escondido Canal and Escondido's water rights on the San Luis Rey River (about 7,300 acre-feet per year) in return for a sum of money as yet undetermined. In addition, Escondido would have the right to purchase a specified quantity of water and the further right of first refusal to purchase water which is excess to Indian needs.

The Vista Irrigation District would enter into a contract authorized by Congress with the Secretary of the Interior and the Indian bands, allocating the waters of the San Luis Rey River between them. Vista would reconstruct Henshaw Dam, its storage and flood control capacity now severely limited because it has been declared prone to failure in the event of seismic activity, at its expense and allow the Indians to store water in that facility without charge. Vista would agree that the Indians may receive 50 percent of the net safe yield of its underground well field above Henshaw Dam provided that the Indians pay their proportionate share of pumping costs. In addition, Vista would place deed restrictions on its 43,000 acres of upstream watershed lands to protect in perpetuity water quality and quantity. In return, Vista would receive an as yet undetermined sum for the renovation and expansion of the well fields (which would be credited against future pumping costs incurred by the Indians) as well as the right to buy the excess water of the Indians.

The Indian bands propose to use San Luis Rey water to develop their reservation lands primarily for agricultural purposes. Water surplus to Indian needs would be sold to Escondido and Vista and the income derived therefrom would be utilized for economic development on the reservations. Capital improvements including irrigation distribution systems on the reservations and the expansion of the upstream well field would be carried out by the bands. All parties would be released from all liability arising out of the dispute.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

LARRY E. MEIEROTTO,
Assistant Secretary.

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